96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1462

DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

NOVEMBER 13, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NICHOLS, from the Committee on Armed Services, submitted the following

REPORT

[To accompany S. 1918]

[Including cost estimate of the Congressional Budget Office]

The Committee on Armed Services to whom was referred the bill (S. 1918) to amend title 10, United States Code, to revise and make uniform the provisions of law relating to appointment, promotion, separation, and retirement of regular commissioned officers of the Army, Navy, Air Force, and Marine Corps, to establish the grade of commodore admiral in the Navy, to equalize the treatment of male and female commissioned officers, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill is a complete substitute therefor and appears in italic type in the reported bill.

The amendment to the title of the bill makes minor technical wording changes.

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96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1462

COMPLETED
ORIGINAL

DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

REPORT

OF THE

COMMITTEE ON ARMED SERVICES

TO ACCOMPANY

S. 1918

NOVEMBER 13, 1980.—Ordered to be printed

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EXPLANATION OF THE AMENDMENTS

The committee amendment to the text of the bill represents substantive and technical changes to S. 1918 as passed the Senate. The substantive changes are discussed in detail in this report.

PURPOSE OF THE BILL

The purpose of the bill is to revise the laws that govern the management of the commissioned-officer active-duty force. The bill would:

—Establish new statutory limitations on the number of officers who may serve in senior grades below flag and general officer rank;
—Provide common law for the appointment of regular officers and for the active-duty service of reserve officers;
—Provide uniform laws for promotion procedures for officers in the separate services;
—Establish common provisions governing career expectation in the various grades;
—Establish common mandatory separation and retirement points for regular commissioned officers;
—Increase the amount of separation pay for officers separated involuntarily short of retirement; and
—Provide related authorities to manage the officer force under the revised personnel system.

TERMS USED IN THE REPORT

The titles corresponding to officer pay grades are delineated in the following table:

Officer pay grades	Army/Air Force/Marine Corps	Navy
0-1	2d lieutenant	Ensign.
0-2	1st lieutenant	Lieutenant (junior grade).
0-3	Captain	Lieutenant.
0-4	Major	Lieutenant commander.
0-5	Lieutenant colonel	Commander.
0-6	Colonel	Captain.
0-7	Brigadier general	Rear admiral (lower half).[1]
0-8	Major general	Rear admiral (upper half).
0-9	Lieutenant general	Vice admiral.
0-10	General	Admiral.

[1] Under S. 1918 the title of the Navy O-7 grade would change to commodore admiral.

Throughout this report when reference is made to S. 1918, unless otherwise specified, the reference is to S. 1918 as reported by this committee.

Due-course officers.—an officer (below the grade of O-7) who has been on continuous active duty since he was commissioned a second lieutenant or ensign, and who has neither failed of promotion nor been selected for promotion earlier than his contemporaries.

Field-grade officer.—a commissioned officer in pay grades O-4 through O-6.

Flag officer.—a commissioned officer in the Navy in pay grades O-7 through O-10.

Limited duty officer.—a commissioned officer of the Navy or Marine Corps appointed from enlisted or warrant officer status for service primarily in a technical specialty.

Officer grade distribution.—the allocation of the commissioned officer force among the several commissioned officer grades.

Promotion opportunity.—the cumulative opportunity for advancement for those who have competed for promotion to the next higher grade. For example, under S. 1918 officers would have an 80 percent opportunity of being promoted from O-3 to O-4.

Promotion timing.—the year of commissioned service at which the greatest number of officers are promoted to a particular grade.

Promotion zone.—an expression of the time criteria required for promotion consideration by a particular selection board. The promotion zone ordinarily has three components:

Primary zone (the length of service defining persons who have acquired the requisite experience to be eligible for promotion consideration).—Persons in this zone who are not selected are considered "failed of selection" or "passed over."

Secondary zone (below the zone).—Persons in this zone have acquired a requisite level of experience but less than that required for the primary zone. "Below the zone" is designed to provide for early promotion of individuals who have demonstrated outstanding potential. Nonselection from the secondary zone does not constitute failure of selection.

Late zone (above the zone).—Persons in this zone have more than the requisite level of experience for promotion and have failed of selection by at least one previous selection board.

Regular officer.—a person appointed in a commissioned officer or warrant officer grade in the Regular component of a uniformed service.

Reserve officer.—a person appointed in a commissioned officer or warrant officer grade in the Army or Air National Guard of the United States or in the reserve component of a uniformed service.

Restricted-line officer.—of the two major naval officer categories (line and staff corps), an officer of the line who is not eligible to command at sea and who is designated for engineering duty, aeronautical engineering duty, special duty, or limited duty; or an officer of the Marine Corps designated for limited duty.

Running-mate system.—Navy system to regulate the promotion of a staff corps or restricted line officer by designating the member eligible for promotion when the unrestricted line officer next senior is eligible; the unrestricted-line officer's promotion is, in turn, regulated under law by length of service and number of vacancies existing in the next higher grade.

Selection board.—A board of officers appointed by the authority of the Secretary of the military department concerned to evaluate candidates and recommend to the Secretary those candidates determined to be the most qualified based on past performance and future potential. Selection boards are used for promotion, integration from reserve to regular status, and continuation on and elimination from active duty.

Unrestricted-line officer.—Of the two major naval officer categories (line and staff corps), an officer of the line who is eligible for command at sea.

Year group.—a group of officers receiving original appointments to second lieutenant or ensign during a particular 12-month period.

PRINCIPAL FEATURES OF THE LEGISLATION

Following is a brief summary of the major features of the bill. Each of these features is explained in more detail in this report.

Grade reductions.—The bill would provide for new permanent grade limitations for each of the services for the grades O–4, O–5 and O–6; that is, major, lieutenant colonel and colonel (in the Navy, lieutenant commander, commander and captain). The committee has recommended reductions of approximately 5 percent from the levels in the proposal submitted by the Department of Defense in the total number of field grades authorized for each of the services.

Annual report.—The bill would require a five-year officer promotion plan to be submitted by February 15 of each year.

Single-promotion system.—The bill would provide for a single permanent promotion structure for each of the services, replacing the dual temporary and permanent promotion systems presently used in the Army and Air Force and eliminating the complex running-mate system presently in use in the Navy.

All-regular force.—The bill would provide sufficient flexibility that after a certain number of years of commissioned service all career-force active-duty officers could become regular officers. It is the committee's intent that this objective be accomplished.

Selective continuation.—The bill would establish standardized career patterns of 30 years for colonel or Navy captain; 28 years for lieutenant colonel or commander; and 20 years for major or lieutenant commander.

The bill would provide for selective early retirement procedures for these grades. These include (at the discretion of the service Secretary) a one-time review by a continuation board for colonels and Navy captains after four years in grade and for lieutenant colonels and commanders after twice failing of selection for promotion, with the requirement that at least 70 percent of those considered be retained until the normal retirement point.

In the case of majors and lieutenant commanders the bill would structure the grade table to allow a 70-percent selection opportunity to lieutenant colonel and commander and would provide for continuation boards so that twice-passed-over officers could be considered for continuation until 20 years. It is the committee's strong desire that these officers be continued to 20 years of service as a matter of course; only in unusual circumstances would this authority not be fully utilized. In addition, the service Secretaries would be provided additional discretionary authority to continue these twice-passed-over officers voluntarily until they have completed 24 years of service. This facet of the selective continuation authority is intended to provide limited flexibility to address shortages in specific skills.

In the case of captains and Navy lieutenants, the service Secretaries would be provided discretionary authority to continue twice-passed-over officers until they complete 20 years of service. This authority is also intended to provide limited flexibility to address skill shortages.

Women officers.—The bill would abolish separate promotion procedures for women officers and would provide that promotion laws be applied equally to male and female officers. The statutory authority for a separate Women's Army Corps (WAC) and comparable organizational entities in the other services would be abolished.

Commodore admiral.—The bill would require a positive selection from the grade of O–7 to O–8 in the Navy and would create the new title of commodore admiral for the Navy O–7 grade. It would give the Navy one-star rank comparable to brigadier general in the other services in place of the present system of promotion from captain to two-star rank and insignia and automatic advancement from pay grade O–7 to pay grade O–8.

Constructive credit.—The bill would provide new procedures for application of what is known as "constructive service credit"—used to determine initial entry grade, seniority and promotion eligibility, to officers with advanced education beyond the baccalaureate level when the advanced training is a prerequisite for appointment as a commissioned officer. The bill would make special provisions for determining the constructive credit for health professions where the normal educational experience exceeds the stated requirement of the educational institutions concerned.

Exclusions.—The bill would provide for uniform exclusions from the limitations of the grade tables for all services. Among those excluded would be Selective Service officers; physicians and dentists; warrant officers; retired officers recalled to active duty for 180 days or less; general and flag officers; reserve officers on active duty for training, for reserve administration, or for special work; and selected reserves on active duty under section 673 b of title 10.

Separation pay.—The bill would provide for the payment of separation pay equal to 10 percent of annual basic pay times years of service up to a maximum of $30,000 for commissioned officers involuntarily separated before qualifying for retirement.

STUDY AND HEARINGS PRECEDING THE LEGISLATION

S. 1918, as reported by the committee, is similar to legislation passed by the House of Representatives in both the 94th and 95th Congress. In the 94th Congress, H.R. 13958 was passed by a vote of 343 to 4. Due to time constraints, no action was taken by the Senate. In the 95th Congress, H.R. 5503, identical to H.R. 13958 was passed by a vote of 351 to 7. Again the Senate took no action. During the 96th Congress, the Senate initiated action and passed S. 1918—in a form significantly different from the legislation passed previously by the House and proposed by the Department of Defense.

This legislation has a long history, and actually grew out of a study begun by the Department of Defense in 1972.

That study resulted from a directive of the Congress accompanying Public Law 92–561 that required the Secretary of Defense to submit a report to the Congress on grade limitations for all of the services with appropriate recommendations for permanent legislation. The 1972 study group was chaired by the Assistant Secretary of Defense for Manpower and Reserve Affairs, and its membership included the Assistant Secretaries for Manpower and the military personnel chiefs of each of the military departments. The group had some 30 meetings over 9 months, completing its study in 1973. Legislation was submitted to the Congress in 1974. Preliminary hearings were held on the legislation that year, but no action was taken in the 93rd Congress.

GAO STUDY REQUESTED BY COMMITTEE

During the 94th Congress, the committee requested a study by the General Accounting Office of the manner in which the armed services validate their officer grade requirements and follow the criteria laid down for grade determination. Essentially the General Accounting Office found that the services were doing a good job of following their own regulations and were using consistent and acceptable procedures for validating officer grade positions.

Following is a summary of the GAO findings and conclusions:

1. The services use consistent and formal procedures to determine the number and grade of each officer position required. The services are complying with their own procedures for validating officer requirements. Grade-determination criteria were being applied uniformly, and directives and policies on officer allocations were being followed.

2. Grades in combat units fall into logical order. In support units, grade criteria are less obvious and more difficult to trace. Specific grade determination of positions in support units, in the context of work performed and the availability of qualified officers, was not unreasonable or inconsistent with skills and experience demands.

3. The large number of field-grade officers (over 83,000) results from the large number of management echelons rather than individual grade determinations. There are over 200 management headquarters in addition to other type headquarters. A sizable reduction, through elimination of management headquarters and staffs and associated, duplicative functions, may offer the best means of reducing field-grade positions.

4. Approximately 78 percent of field-grade officers and 64 percent of all commissioned officers are in support-type units. (The percentage estimate will vary according to the method used to judge whether units are combat or support). In support forces, 35 percent of field-grade officer positions are in command-type (staff and management headquarters) units. The demand for higher officer grades in these units appears to be justified in view of the level of responsibility.

5. About 12 percent of field-grade positions are in agencies external to the services. Among colonels (Navy captains) it runs 21 percent.

The complete report is included in the committee's hearings on the legislation during the 94th Congress. (H.A.S.C. 94–20).

COMMITTEE CONSIDERATION

Although extensive consideration had been given by the committee to the Defense legislative proposal in the 94th and 95th Congress, because of the significant conceptual differences inherent in the Senate version of the bill, the committee reopened its deliberations during the second session of the 96th Congress.

The Military Compensation Subcommittee considered the Senate version indepth during a series of four hearings and a subsequent mark-up session. The bill recommended by the subcommittee and reported by the committee reflects many of the provisions from the Senate version that represent improvements to the original proposal and to the legislation previously passed by the House of Representatives. On the other hand, the reported bill maintains the integrity of the current officer personnel management system and its fundamental precepts that were overwhelmingly reaffirmed by the House of Representatives on two previous occasions.

From an administrative perspective, the committee recommendations, compared to previous House versions of the legislation, reflect calculated movement toward a uniform management system.

BACKGROUND

To fully understand the need for the Defense Officer Personnel Management Act, it is necessary to review the development of the officer corps of the United States armed forces.

LONG HISTORY OF NOT FULLY READY OFFICER CORPS

Throughout the long history of the United States, the officer corps of the armed forces as a whole has been unready for combat at the time war commenced. This was true up to, and including, World War II; before every war some effort was required to improve the officer corps and get it ready for combat. The first general retirement law for the United States armed forces, passed in 1861, was entitled "An Act to Improve the Efficiency of the U.S. Army"; and its principal purpose was not to provide retirement benefits, but rather to provide a mechanism for removing aged and infirm officers from positions of command. The problem of having an officer corps with the proper level of experience and maturity at each level of command continued, and before to each war some mechanism was required to allow the removal of those unready or unfit for command.

DEVELOPMENT OF THE OFFICER PERSONNEL ACT

Following World War II, the Congress and the Executive Branch attempted to provide a long-range management framework in which the officer corps could be successfully managed and through which the historical problem of unreadiness for war could be avoided. The result of this effort was the Officer Personnel Act of 1947. This Act essentially created what is called the "up-or-out" promotion system. This system provided that officers would move through the various grades in cohort groups (normally year groups) and would be considered for promotion at various points in their careers consistent with norms set in the Act. The Act provided that officers twice passed over for promotion would, after a certain number of years, depending upon their particular grade, be separated from active service, and, if eligible, retired.

Before World War II, officers normally served 30 years or longer before retirement. Under the Officer Personnel Act, colonels (and Navy captains) were required to retire at the completion of 30 years of service if not promoted; lieutenant colonels at the completion of 28 years of commissioned service if not promoted (commanders at the completion of 26); and majors and lieutenant commanders at the completion of 21 and 20 years of commissioned service, respectively. Army and Air Force captains were required to be separated at the completion of the 14th year of service if not promoted, and first lieutenants were required to be separated after 7 years if not promoted. Navy lieutenants and lieutenants (junior grade) were required to be separated following their second failure of selection.

The Act thus provided for appropriate distribution of officers of desirable maturity and experience in the various ranks—what is referred to as grade distribution.

SHORTCOMINGS OF THE OFFICER PERSONNEL ACT

The Officer Personnel Act provided a much more effective management system than the officer corps had known in the past, but it had a number of shortcomings. Chiefly these were related to contemplated developments that did not materialize. The Act was based on the assumption that the armed forces would be returned to a small, all-regular force within ten years. It was drafted at a time when lawmakers could not have foreseen the requirements for large, ready forces on an sustained basis.

The law imposed statutory ceilings on the number of regular officers in each service. To provide for the transition, it also gave the Secretary of each military department authority for temporary promotions when the number of regular and reserve officers on active duty was more than the authorized strength of regular officers.

The law allowed continuation of significant differences between the services because of past practices. For example, there were fixed permanent and temporary limitations in the Navy requiring significant forced attrition, whereas in the Army and Air Force there was no limitation placed upon the use of temporary promotion; and up through the grade of lieutenant colonel, permanent promotions could be made without regard to vacancies to ensure promotion opportunity of at least 80 percent.

The Officer Personnel Act embraced different approaches to the grade distribution of officers. With respect to permanent grades, the law provided grade-distribution ceilings for the Navy and Marine Corps that were identical to each other but different from the ceilings authorized for the Army and Air Force. The ceilings on permanent promotions were expressed as a constant percentage of total officer strength. For example, for the Army and Air Force 8 percent was authorized in the grade of colonel whereas the authorization for the Navy and Marine Corps was 6 percent. However, it should be noted that the 6 percent authorization for the Navy pertained only to the unrestricted-line officer category. Staff corps and restricted-line officers (constituting about 40 percent of the Navy officer corps) were authorized to be in addition to the 6 percent authorization.

CONGRESSIONAL PIECEMEAL ADJUSTMENTS

Since 1947, the Congress has, in effect, undertaken a number of fixes to deal, on an ad hoc basis, with problems that developed in the management of the officer corps. It had not, until deliberations began on the Defense Officer Personnel Management Act, reviewed the operation of the Officer Personnel Act as a whole.

Officer Grade Limitation Act of 1954

In 1954, the Congress, having become concerned with the increased number of senior officers in the armed forces and the increased use of temporary promotions, passed the Officer Grade Limitation Act of 1954 in order to better control the grade distribution.

This law established specific limitations on the numbers of both regular and reserve officers who could serve on active duty in the grade of O–4 and above.

The Congress took this action in the belief that the provisions for temporary grade structure in the Officer Personnel Act were too liberal for the Navy and Marine Corps and that the absence of any limitations for the Army and Air Force was unacceptable. It was recognized, however, that subjecting the officer force to sudden and unforeseen fluctuations through the imposition of appropriations riders and other short-term legislative restrictions, would make effective long-range personnel management on the part of the services virtually impossible. In addition, such measures were destructive of service attempts to procure and retain officers in the desired numbers and quality by offering viable career-progression opportunity.

In determining grade limitations for each service, Congress specified lower limitations in the grades of O–5 and O–6 for the Air Force than for the Army and Navy. This recognized that the Air Force had been constituted from the Army Air Corps and that the age distribution of its officer force was much younger than the Army's.

Air Force grade-relief legislation

Beginning in 1959 the Air Force began to experience problems as its force matured; it ran up against Officer Grade Limitation Act ceilings more restrictive than those of the other services. Since strict enforcement of the ceilings would have required unacceptably high attrition rates for Air Force officers, the Congress passed grade-relief legislation on a temporary basis, allowing the Air Force additional officers in the grades of major and lieutenant colonel. The grade relief was extended in 1961 and again in 1963, when the Department of Defense was directed to provide a draft of legislation to equitably solve the Air Force problem permanently.

In 1965 the Department of Defense, after extensive study, submitted a legislative proposal known as the Bolte Bill (after General Charles Bolte, U.S. Army, chairman of the committee that conducted the study and drafted the proposal). The legislation, however, was not acted upon by the 89th Congress and was not reintroduced in the following Congress. As a result, subsequent, temporary relief legislation for the Air Force was requested and approved by the Congress in 1965, 1966, 1972, 1974, 1976, 1978, and 1980.

In approving temporary relief legislation in 1972, the Committee on Armed Services indicated that it would not in the future consider individual legislation for the Air Force independent of a review of the grade-distribution requirements of the Armed Forces as a whole. From this direction sprang the Defense Officer Personnel Management Act (DOPMA).

Other temporary legislation

It has also been necessary to pass legislation to allow additional forced attrition to meet special problems. In 1959 Congress passed the so-called "hump" legislation for the Navy and Marine Corps to allow early selection-out of officers in the O–5 and O–6 grades. In the next year similar legislation known as "White Charger" was passed for the Air Force. In both cases the legislation was to allow thinning out of "humps" or overages in senior grades.

In addition to these temporary measures, there have been permanent changes to the Officer Grade Limitation Act. In 1961, the limitations on controlled officer grades in the Marine Corps were readjusted to include supply-duty officers previously excluded from the table. In 1966, Congress raised the ceilings on Marine Corps general officers in recognition of increased Marine Corps and joint requirements. In 1967, in recognition of the unique problems of obtaining and retaining medical and dental officers, Congress exempted all physicians and dentists from grade limitations on O–6's and below. This enabled the Secretary of Defense to accelerate the promotion of these officers and improve their promotion opportunity in an effort to improve their retention.

Nearing the end

When the Committee on Armed Services reported out the Officer Personnel Act of 1947 (H.R. 3830, 80th Congress), it stated:

> The committee takes the position that it is bringing before the House an equitable, economical, and forward-looking officer promotion program for the services—a program that will offer careers satisfactory enough to attract capable men, promising enough to hold in service the capable men already in uniform, and economical enough to be acceptable from a budgetary standpoint.
>
> Although the original Army and Navy promotion bills have been combined into H.R. 3830, it is incorrect to conclude from this action that the services' promotion programs are now "merged," "integrated," or "unified"; quite the contrary. The Army and Navy systems are still widely divergent in many basic respects; necessarily they will continue to function differently for some years. Most of the remaining disparities between the programs are the product of many years of separate, unrelated personnel planning in the services, and although both the subcommittee and the committee were initially inclined strongly to integrate the sys-

tems completely, it became apparent early in the hearings that so radical a departure at this time would be premature. The committee anticipates, however, a constantly accelerating trend over the years ahead toward the bringing of the systems into greater coincidence in most basic respects. By bringing the separate programs into one bill for the first time, H.R. 3830 is itself a substantial step in this direction. It will, of course, be followed by other bills effecting refinements in both systems. As both programs are thus progressively improved over the years by the Unified Committee on Armed Services, there is little doubt that most if not all the basic differences which now necessarily exist will gradually fade away.

S. 1918, then, could be considered one of the final steps in the evolutionary process begun in 1946 to unify officer promotion and management procedures among the services.

ANOMALY OF CAREER ACTIVE-DUTY RESERVISTS

Under present law the anomaly has developed in which large numbers of reserve officers may serve 20 years on active duty and qualify for active-duty retirement. However, the law provides for different treatment of regulators and reservists and results in treatment that is often perceived as inequitable by reserve officers.

Uncertain career expectation

Specifically the reservist on active duty has no expectation of minimum time in grade prior to retirement or separation and may be released at any time subject to the needs of the service.

When there are reductions in force, particularly at the time the strengths of the services are being reduced following a war, it is necessary to reduce the number of officers in various grades; and the reductions fall heavily upon reserve officers. This is especially noticed in the grades O–4 to O–6 where the regular officer on attaining permanent O–4 grade, has a career expectation of 20 years of service. At the completion of 20 years of service he is eligible for immediate retirement.

Since reserve officers have no such expectation, in times of reductions in force, reserve officers in these senior grades may be released with anywhere from 10 to 18 years of service and are, thus, required to leave active duty short of earning immediate retirement. (The current law, unchanged by the bill, provides that after a reserve officer has completed 18 years of service he should normally be retained until 20 years.)

Dual compensation

On the other hand, reservists who do complete 20 years of active duty receive an advantage under the dual compensation laws which restrict the amount of retired pay that career officers may receive if they work for the Federal government in a civilian capacity. These laws, although intended to apply essentially to careerists, were originally written to apply to regular officers and, therefore, do not apply in the same manner to reservists who happen to finish 20 years of active duty.

In a recent change (Public Law 95–454) to the dual compensation laws, *all* retired military personnel are limited to a combined income from military retired pay and civil service salary equal to the salary for Level V of the Executive Schedule (currently $50,112). However, retired regular officers employed by the Federal government are subject to an *additional* reduction in their retired pay irrespective of their combined income. This reduction is accomplished by providing a base amount of retired pay (currently the first $5,746.59) plus one-half of the remainder. Civil service salary plus this reduced level of retired pay is then subject to the Executive Level V ceiling.

Given the conjunction of these two provisions of law, a reserve officer might serve 20 years on active duty, become employed in a civil service job with the government, and receive both the full salary of the civil service position and full military retired pay. A regular officer in like circumstance, however, would receive less than full retired pay.

Hip-pocket promotions

In addition, under the current law and dual-promotion system, a reserve officer of the Army or Air Force may be retired after 20 years' active duty in a reserve grade that is higher than any grade in which he served on active duty. This is because of the dual consideration by active and reserve selection boards—a procedure discontinued by the bill.

Correction of the anomaly

As explained further on this report, the present bill would eliminate these inequitable situations by permitting an all-regular career force.

Discussion of Major Provisions of the Bill

This section describes in detail the major provisions of the bill as reported by the committee and discusses the rationale for changes from current law.

GRADE-TABLE AUTHORIZATIONS

The authorizations for senior-officer grades are controlled by a ceiling on the number of officers in each of the grades O–4, O–5 and O–6. The allowance for these so-called field grades is expressed in law as a finite number of officers in relation to the strength of the officer corps as a whole.

This structure of allowances is known as the grade table.

The new grade table for each service takes into account the institution of a single-promotion system to replace the present two-track promotion system, as discussed further on in this report. It likewise will replace both the fixed percentage limits for regular officers of the 1947 Officer Personnel Act and the grade limits for temporary promotions of the 1954 Officer Grade Limitation Act.

Purpose of the grade table

The grade table was designed by the Department of Defense to achieve three interrelated objectives:

—Allow the services to meet requirements for officers in the various grades at ages and levels of experience conducive to effective performance;

—Provide career opportunity that will attract and retain the number of high-caliber officers needed; and

—Provide reasonably consistent career opportunity among the services.

Achievement of these sometimes conflicting objectives means striking a balance among several interacting variables. These variables are:

—The grade distribution: that is, the number of officers in each grade;

—The promotion point: that is, the years of service when the greatest number are promoted; and

—The promotion opportunity: that is, the cumulative opportunity for advancement.

The career pattern is also affected by normal attrition: that is, voluntary retirements, resignations and death; and forced attrition: that is, involuntary separations and retirements.

In changing the system it must be kept in mind that a change in one variable affects the others. For example, an effect of reducing grade distribution in a higher grade, assuming no change in attrition, could be to retard promotion timing and promotion opportunity in the lower grades.

A determination, therefore, to reduce the numbers authorized in the three grades affected by S. 1918 would require, in turn, a determination of the effect on promotion timing and promotion opportunity. To simply reduce the grade distribution without any change in the attrition rate might have so great an effect on career patterns as to adversely affect retention and have a negative effect, therefore, on the quality of the officer corps. Since the principal purpose of the system is to maintain a high-quality, numerically sufficient officer corps, changes in the structure must be made very carefully and promotion opportunity has to be considered in determining the grade distribution.

Essentially, two steps are taken to assure a sufficient promotion opportunity so as not to adversely affect officer retention. The first is to structure the grade table initially so that, in meeting requirements, it also provides the desired career flow; the second is to provide mechanisms for increasing the forced attrition when such is necessitated by force reductions or other reductions in the grade allowances.

Sliding-scale principle retained

The bill would retain the principle currently in law that provides that the percentage of field-grade officers does not increase or decrease as rapidly as the strength of the officer corps as a whole.

The reason for this is that there are some senior jobs that are independent of the number of people in an organization but that for one reason or another, nevertheless require senior rank. These jobs can not be abolished when the force is reduced. Conversely, when the force is increased, it is not feasible or necessary to increase the number of senior officers proportionately.

The following table illustrates the operation of the sliding-scale principle:

ILLUSTRATION OF SLIDING SCALE PRINCIPLE—ARMY OGLA AUTHORIZATIONS

[Percent of total officer strength]

Strength	Generals	Colonels	Lieutenant colonels	Majors
70,000	0.61	5.86	13.07	17.86
80,000	.56	5.57	12.76	17.56
90,000	.53	5.28	12.51	17.33
100,000	.50	5.00	12.27	17.05
110,000	.46	4.73	12.06	16.70
120,000	.43	4.50	11.81	16.40

Statutory limits restricted to field grades

The bill would not provide finite limits in law for the lowest three officer grades, O–1 through O–3, because these grades are subject to substantial annual changes. The proportion of officers in grade O–1, for example, is primarily related to new officer procurement.

Expansion and contraction of the officer force to meet changing requirements, of necessity, must be predominantly in the lower grades. To illustrate, the Army's historical distribution in the grade of second lieutenant (O–1) shows the following pattern:

Percent O-1 to Total Officers

Year:	
1936	6.6
1943	43.4
1948	3.6
1953	21.2
1957	10.8
1967	23.0
1971	9.2
1975	10.2
1980	15.3

If total officer strength increases, procurement of new officers increases, and there are many additional officers in the entry grade (O–1). If total officer strength decreases, new procurement is reduced, and the relative proportions of officers in grades O–2 and O–3 increases. If there were finite limitations on these grades, at the time of a strength reduction, it would be necessary to arbitrarily separate officers in O–2 and O–3 grades or, alternatively, to reduce many of these officers in grade and/or invoke promotion freezes. The net result of these actions would be a very unstable career prospect.

For these reasons, the Officer Grade Limitation Act did not impose controls on these junior grades, nor would DOPMA.

Committee reductions in the field grades

S. 1918, as reported by the committee, would reduce the number of field grade officers authorized by about 5% compared to the number requested in the Department of Defense legislative proposal. This compares to a 20 to 30 percent reduction in the field grades contained in S. 1918 as it passed the Senate. Further, the reductions recommended by the committee would be only 3 to 4 percent below current actual strength levels.

The committee believes that the reductions contained in the bill, as reported, will have, at most, a negligible impact on the career expectations of individual officers. To accommodate these reductions from current levels, promotion opportunity could be decreased by a minor amount or, almost certainly more desirable, promotion timing could be delayed by one or two months. Either change or a combination would permit the services to operate easily under the new grade tables. Further, a two-year transition period is included to prevent any undesirable perturbations resulting from the reductions.

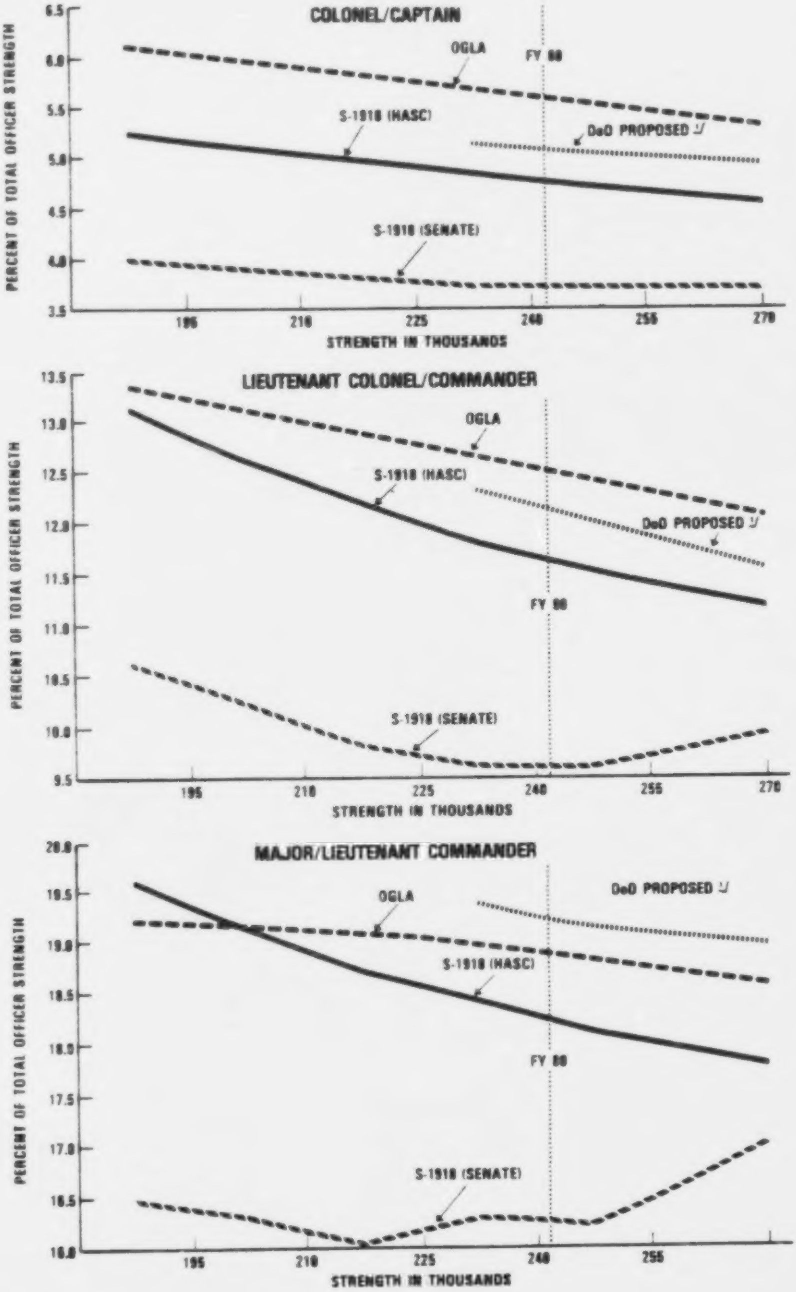
The new grade tables were designed based on the actual retention of officers being currently experienced. The committee recognizes that current retention is low—lower, in fact, than is desirable. However, the grade tables developed by the committee will permit the services to maintain promotion timing within the planned promotion "window" even as retention improves. The term promotion "window" refers to the normal time period during which officers are promoted to the next higher grade; for example, for officers being considered for promotion to O–5, the promotion window is from the 15th through the 17th year of service.

Although the committee is *generally satisfied* with the assessment of grade requirements, significant uncertainty exists in justifying the need for some of these requirements. Consequently, the services should review their methodologies for assessing requirements by grade and refine the determinations process to remove the remaining uncertainty.

Recognizing that the grade tables are based on retention that is considerably lower than that required to reach requirements as computed under current methodology in the mid- to long-term, the committee would be receptive to legislation in the next 3 to 5 years that, in the face of improving retention and more definitive grade requirement determinations, would increase the statutory ceilings to continue to permit operation within the DOPMA management parameters (promotion opportunity and timing).

The following chart showing each of the controlled grades, reflects the ceilings imposed by the Officer Grade Limitation Act (OGLA), the ceilings proposed by the Department of Defense in its legislative proposal, the ceilings contained in S. 1918 as it passed the Senate, and the ceilings recommended by the committee. Distribution in each grade is depicted on the vertical axis as the percentage of total officers; officer strength is displayed on the horizontal axis.

DEPARTMENT OF DEFENSE AGGREGATE EXISTING GRADE LIMITATIONS COMPARED TO PROPOSED GRADE TABLES



1/ THE DoD PROPOSAL COVERED A NARROWER STRENGTH BAND

CAREER PROGRESSION

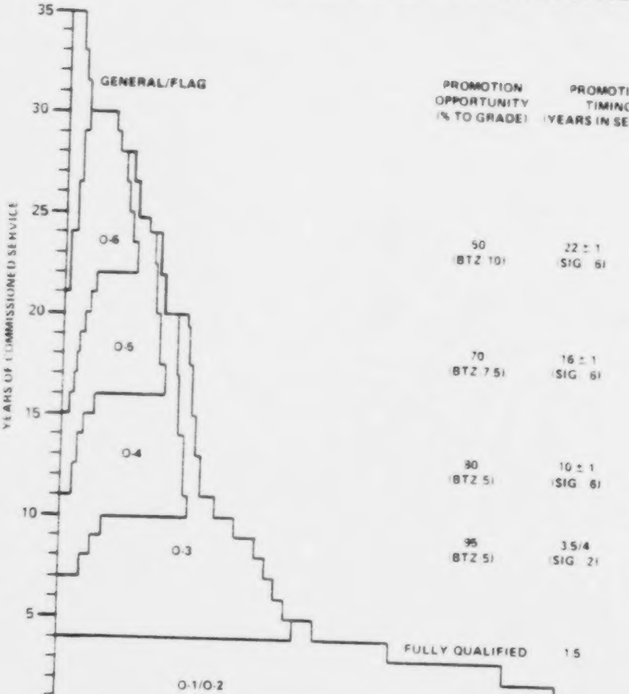
The following chart depicts a composite of the four services' officer corps under the management system contained in S. 1918, as reported, after reaching stabilization. Across the bottom of the chart are numbers of officers in thousands. The vertical axis shows years of commissioned service. The chart illustrates how a specified number of officers entering service (at the bottom) will decrease through normal and forced attrition through each year of a normal 30-year career. The chart is arranged to illustrate the normal distribution by years of service for each grade. The columns of numbers show the norms for years of service required for promotion to each grade and the objective career opportunity the system is designed to afford.

In the pyramid are spurs below and above each grade that show below-the-zone promotions and passed-over officers serving out their normal career expectations in the lower grade and those continued beyond normal career expectation.

The column on the right shows the extent to which attrition will reduce the number of each 100 entrants who aspire to a military career.

An officer who progresses through the system as depicted in the tabular data is referred to as a "due-course" officer.

DIMENSIONS AND CHARACTERISTICS OF DEFENSE OFFICER PROMOTION SYSTEM



PROMOTION OPPORTUNITY (% TO GRADE)	PROMOTION TIMING (YEARS IN SERVICE)	CAREER EXPECTATION	CAREER PATTERN 100 OFFICERS (NO. TO GRADE)
			1.6
50 (BTZ 10)	22 ± 1 (SIG 6)	AFTER 4 YEARS IN GRADE BOARD REVIEW TO 30 YRS	18
70 (BTZ 7.5)	16 ± 1 (SIG 6)	2X NON SELECT BOARD REVIEW TO 28 YRS	41
80 (BTZ 5)	10 ± 1 (SIG 6)	2X NON-SELECT SELECTION IN UP TO 24 YRS	65
95 (BTZ 5)	3.5/4 (SIG 2)	2X NON SELECT SELECTION IN UP TO 20 YRS	87
	1.5	2X NON-SELECT SEPARATION	98

LEGEND
BTZ BELOW-THE-ZONE
SIG SERVICE-IN-GRADE

UP-OR-OUT SYSTEM RETAINED

As can be seen from the foregoing, the revised grade table, together with the selective-continuation procedures and mandatory retirement and separation points in the bill, contemplates the continuation of the up-or-out system as the fundamental concept for the management of officer personnel. There is nothing new about this concept. It has been in effect for nearly 35 years and on the whole has served the country well. The system has given the armed forces what they never before had in peacetime—a youthful, vigorous, *fully* combat-ready officer corps.

In considering S. 1918, the committee was principally concerned with enhancing the overall quality of the officer corps. The committee was, therefore, equally conscious that in such a complex system dealing with human beings great care must be taken to ensure that changes do not adversely affect the individuals concerned or the quality of the force as a whole. Any radical change in the system, therefore, would have to be undertaken on a careful basis after extensive study.

Promotion passover is not considered a stigma

The committee believes it is important to recognize the purpose of the up-or-out system and that a passover for promotion under this system should not be considered a stigma or adversely reflect on the quality of service of officers not selected for promotion.

The simple fact is that if the system is working right, it will, of necessity, result in passover for promotion of officers who are fully qualified to serve in the next-higher grade. This is because the function of the up-or-out system is to provide at each grade more officers who are qualified to serve in the next grade than the billets require. Thus, the services will have selectivity and can pick the best from a selection of fully qualified officers. If there were not enough fully qualified officers to serve at the next higher grade, something would be fundamentally wrong with the system.

The system should be recognized as a competitive system where the most outstanding are selected and in which the numbers that can be selected will inevitably vary with the requirement of the times and needs of the service in the particular grade concerned.

Not everyone is going to be promoted to the highest grades, in part because not all are required; promotion based entirely on individual capability without regard to requirements would be wasteful of resources. Therefore, it is inevitable that capable officers are going to be passed over from time to time. They are simply not quite as high on the competitive list as someone else. Only one man can be chosen quarterback although many other contenders might be outstanding players.

The committee would particularly note that many fine officers with outstanding records who served their country capably in Vietnam have, in recent years, been passed over for promotion and been required to leave the services as the size of the armed forces were reduced. This is particularly notable in the Army in which the size of the officer corps has been reduced 43 percent since 1969. Under any system, with a reduction of that size, it would be necessary to remove and release from active duty a goodly number of capable officers. The only alternative would be to keep officers on active duty in much higher numbers than required and to keep a much higher mixture of senior-ranking officers than there are jobs for.

The release of outstanding officers should not be blamed on the up-or-out system; indeed history will show that outstanding officers were released in force reductions following wartime or in other force reductions long before the up-or-out system was created.

The committee is particularly concerned that those officers passed over for promotion or involuntarily released in recent years should not be improperly labeled as failures. This is a great disservice to an outstanding group of Americans who served their country with skill and courage. The committee believes it is important to recognize their contribution and important for them to know that the Congress appreciates their valuable service.

Counseling for passed-over officers

The committee is concerned that, to the maximum extent possible, officers who fail promotion should be aided in gaining a reasonable understanding as to why they were not selected. To this end, the committee directs that each service establish and maintain within its personnel department a program to provide counseling to passed-over officers.

The committee recognizes that the officer management system that has been in law for over 30 years, and that would be modernized and improved by the present bill is a competitive system that requires the selection of the most outstanding among a group of generally outstanding and fully qualified officers. As the committee has stated previously, it is necessary if the system is working as designed to provide at each grade more officers who are qualified to serve in the next higher grade than are required so that selectivity is available.

As such, the committee recognizes that the selection process is based on the "whole man" concept and that each selection board is making relative judgments among groups of highly capable officers. Selection for promotion is based on an estimate of potential to perform the broader requirements of the next higher grade and, as such, is not a precisely definable judgment.

With that understanding, however, the committee believes that the services to the maximum extent possible, should have procedures for counseling officers who fail selection to grades O-3 through O-6 and directs that the services plan accordingly. The committee envisions that consultation would be available, on request, from an officer senior to those in the selection zone who is experienced in personnel matters and who could review the record of the passed-over officer to indicate factors that may account for him not being competitive. The committee believes that such consultation should be available for an officer after both the first and second passover.

The committee further directs that each service report to the committee within 9 months after the passage of the bill an outline of the programs devised for counseling passed-over officers and the progress being made toward achieving a better understanding of the system.

OFFICERS EXCLUDED FROM STRENGTH AND GRADE CEILINGS

In keeping with the present law for each of the services, the bill would exclude certain categories of officers serving on active duty from the ceilings on the total numbers of officers on active duty and the numbers of officers on active duty in each of the controlled grades. S. 1918, as reported, however, consolidates common language in one section of law applying to all services and provides for uniformity in exclusions. The general principle on exclusions is that officers who are out of the normal promotion stream should be excluded from accountability under the grade table.

Among the categories of officers excluded from the active-duty strength and grade ceilings would be officers on active duty for the administration of the Selective Service System under the Military Selective Service Act, reserve officers on active duty for training, reserve officers on active duty for "special work," and officers who are being paid directly from appropriations for the reserve components. These exclusions are required in order to permit realistic management of the career-officer structure while at the same time providing for training and administration of the reserve forces during peacetime and the management of the Selective Service System.

General and flag officers

General- and flag-officer grades would not be included in the grades on which ceilings are imposed but would remain under Officer Grade Limitation Act limitations. The committee plans to consider general- and flag-officer personnel management legislation at a later date.

Medical and dental officers

Medical and dental officers would be excluded from the numerical ceilings imposed on active-duty officers in the grade of O–4 and above. This preserves the exclusion in current law and is required by the necessarily disproportionately higher number of medical and dental officers on active duty in the grade O–4 through O–6.

Retired officers

The bill would also restate and extend to the Army and Air Force, a provision of law applicable to the Navy that excludes from the grade ceilings retired officers serving on active duty for 180 days or less. Such officers are usually on active duty for special projects of limited duration for which they are particularly well qualified; they are not competing in the promotion system. Exclusion of this very limited number of recalled retired officers from the prescribed grade ceilings is considered appropriate.

Warrant officers

Warrant officers would not be included in the grade ceilings since they are covered by separate provisions of law.

Reservists performing special work

The bill would also exclude reservists ordered to active duty to prosecute "special work." This continues the exclusion contained in present law for the Navy and Marine Corps in section 5446 of title 10, United States Code.

The committee intends that an officer detailed to prosecute special work would be a reserve officer ordered to active duty, for a prescribed period, to perform a given task for either the active force or the Reserve component and for which no other officer on active duty is available or possesses the unique qualifications or special skills required to complete the task assigned.

Examples of the use of this authority in the past are a specialist to develop a credit-card type program to record and account for reserve paid drills; a financial consultant to participate in the Third Quadrennial Review of Military Compensation; officer membership on the Reserve Forces Facilities Study and the Total Force Study; and an officer with immigration/naturalization experience to work on the Indo-China refugees assistance program.

The Navy also uses 100 to 150 officers per summer to augment their summer active-duty-for-training programs. Officers are used as instructors for reservists going through Officer Candidate School instruction and to provide base and administrative support at Navy facilities that have reservists assigned for summer training. These officers provide a surge capability for the facilities responsible for training the Naval Reserve.

The exclusion would permit the service Secretary to order a reservist to active duty for a short period of time to perform a task that is temporary in nature and essential to the service's mission but for which no billet or structure space exists. An officer so assigned is recognized as not being a part of the career force.

Officers associated with administering and training the reserves

Within the active-duty officer structure, there are a number of reserve officers on extended active duty whose principal function is the development of policies and programs governing the reserve forces and the training and administration of those forces. Those officers should not be chargeable against the number of officers on active duty in the standing forces.

Notwithstanding the acceptance of the principle of excluding from active-duty strength and grade ceilings those reserve officers on active duty in connection with training and administering the reserve forces, the committee believes that the policies governing grade and length of service of such officers should be reviewed by the Department of Defense to ensure that the current practices are efficient in terms of readiness and economical in utilization of personnel. A report on such a review should be provided the committee within 6 months following enactment of S. 1918.

The committee believes, particularly, that the TAR (Training and Administration, Reserve) program in the Navy must be reexamined to ascertain whether it continues to be the most appropriate way of meeting Naval Reserve training needs. Some of the assignments given to TAR personnel could be performed by regular personnel, thus creating additional rotation billets for active personnel at a time when sea-going personnel on active duty are stretched thin. Although the Navy recently articulated such a suggestion (which was initially opposed by the House Committee on Appropriations), the Navy should consider taking steps to limit the use of senior grades in this program pending further congressional review.

Full-time manning positions

Further, although the recently established category of reservists assigned to full-time active duty in support of the reserves is excluded from active duty accountability, S. 1918, as reported by the committee, contains a ceiling by service and component on the total number of officers of a given grade that can be on active duty. These ceilings do not represent a "grade table" because they are not dependent on total force size. The committee did not develop a grade table for this category of reservist because the full extent and detail of its use are not yet clear. However, the committee believes that some management restrictions should be imposed pending a more complete definition of the role of this category.

Mobilized reserves

Finally, reserves called to active duty during a mobilization would *not* be excluded from the active duty grade tables. The grade tables are designed to permit management of the officer corps under a wide range of peacetime environments; they are not designed to operate during a mobilization in response to a national emergency. S. 1918, as reported by the committee, would permit the President to waive the provisions of DOPMA during a period of national emergency. Officer management during a period of national emergency necessarily is different than during an extended period of peace, and the committee did not believe it feasible to develop a single management system to respond to each widely different circumstance.

Authority to provide for temporary appointments during a war or national emergency would be provided by S. 1918 as reported by the committee.

Summary

The following table summarizes the exclusions from the grade table:

FISCAL YEAR 1981 [1]—OFFICER STRENGTH SUMMARY

Service	Total Officers [2]	General and flag officers	Medical dental	Warrant officer	Other [3]	S. 1918 accountable
Army	99, 080	432	6, 307	13, 960	1, 487	76, 894
Navy	64, 475	261	5, 160	3, 095	1, 425	54, 534
Marine Corps	17, 917	66	NA	1, 215	105	16, 531
Air Force	97, 853	360	4, 918	NA	499	92, 076
DOD	279, 325	1, 119	16, 385	18, 270	3, 516	240, 035

[1] Based on fiscal year 1981 President's budget.
[2] Includes 2,017 officers funded from Reserve and Civil Works appropriations.
[3] Reserve programs administrators, Reserve officers serving with Selective Service.

RESERVE PERSONNEL MANAGEMENT PROPOSAL

The Department of Defense has subjected the statutes governing management of the reserve officer structure to review in recent years but final decisions as to recommendations for change have been withheld pending the final form of DOPMA. It is recognized that there must be compatibility between the management systems for regular and reserve officers. The committee is desirous of receiving appropriate legislative recommendations from the Department of Defense promptly after action by the Congress on S. 1918 is completed.

THE SINGLE PROMOTION SYSTEM

The bill would provide a uniform, single promotion system for all four services.

Present law provides the Army and Air Force with a two-step promotion system. Temporary promotions are administered within the ceilings of the Officer Grade Limitation Act of 1954 while permanent promotions are made under the permanent regular limits prescribed by the Officer Personnel Act of 1947. This means two separate selections—one for temporary grade, which is the initial change of insignia and increase in pay grade, and a second permanent promotion, that sometimes has a significant impact on the career expectation. This two-step system is cumbersome and wasteful and is no longer justified. The bill would abolish such temporary appointments.

For the Navy and Marine Corps present law provides a complex system under which there is a single selection for advancement to both temporary and permanent grade as vacancies occur, but the grade table is applied directly only to unrestricted line officers. The promotion of restricted line and staff corps officers is governed by the complex running-mate system under which the officer becomes eligible for promotion when the unrestricted line officer next senior to him is initially in the promotion zone. The bill would abolish this running-mate system and put all officers under the single standardized promotion system.

In conformance with the total force policy, the new grade limitations are constructed in such a way that major expansions will be accomplished for the most part through the recalled Reserves, not through the creation of temporary positions that would be filled by officers promoted from within the peacetime active duty force.

ACTIVE-DUTY LIST

The bill would provide for a single "active duty list" in each service.

The active-duty list would contain the names of all commissioned officers in the grade of second lieutenant or ensign and above on active duty except for retired officers and certain reserve officers specifically excluded from the grade table.

The active-duty list would be used to establish seniority within grade, to determine eligibility for promotion and to provide for a proper timing of the promotion system. The list also would be used to determine promotion zones and relative promotion opportunity and for the legal determination of failure of selection.

ALL-REGULAR CAREER FORCE

S. 1918, as reported by the committee, would provide new limitations on the total number of regular officers authorized. These limitations were established with a view toward permitting sufficient flexibility for the services to achieve an all-regular officer force generally by the 11th year of service although the specific point could be determined by the Secretary of the military departments based on the individual service's force structure. The ability to integrate all reserve officers into the career force relatively early in their career will end the anomaly of the career reserve officer discussed earlier in this report and will terminate the unusual vulnerability to forced attrition presently experienced by long-term reserve officers.

Selection into the regular force will occur from the second through the year by which an all regular force is, by policy, attained: it is anticipated that most of the regular force integration will be accomplished by the 9th year. Thus, if the 11th year is the point that defines the career force, it would represent only the last in a normal series of integration opportunities for the reserve officer.

Selection for promotion to the grade of O–4 will normally occur between the 9th and the 11th year of service. This selection is independent of the reserve officer's consideration, at a number of points in his career, for augmentation into the regular force. A reserve officer selected for O–4 prior to or at the 11th year would be normally offered a regular commission for retention in the career force. Conversely, a reserve officer not selected for promotion to O–4 would normally be separated if twice failed of selection.

A regular officer similarly twice considered but not selected to O–4 would normally be separated from the service. It may be that the officer had been very recently augmented from reserve to regular status. His separation, nevertheless, would be appropriate. He is competing for promotion for available vacancies with a group of officers different from the group from which his selection for integration into the regular force was made. His nonselection to the grade of O–4 indicates that he is not competitive with roughly 80 percent of his contemporaries; therefore, like any regular officer in that situation, he would normally be separated regardless of how long he had been in regular status.

However, the committee wishes to stress to all of the services that to the maximum extent possible the final consideration for integration into the regular force, if occurring at any time as late as the ninth year of service or beyond, should be coordinated with the selection for O–4. The committee recognizes that a natural morale problem will be created if an O–3 is informed he is qualified to have a regular designation and be in a career status, but is told, within six months to a year thereafter, that he has failed of selection and has to be eliminated from active service. The committee expects the services, therefore, to be especially diligent in coordinating the O–4 selections and the integration of longer-term reservists under the legislation so as to achieve consistency in the review process.

OTHER PROVISIONS AFFECTING RESERVE OFFICERS

S. 1918, as reported, contains a number of important provisions affecting the management of reserve officers, primarily those on active duty, and is, in the opinion of the committee, of singular significance in providing improved treatment of reserve officers.

S. 1918 would direct the service Secretaries to establish a single active-duty list. This list would encompass all officers on active duty, regular and reserve. These officers would be subject to the grade limitations and promotion provisions of S. 1918 only. S. 1918 would exclude reserve officers on the active-duty list from consideration by a reserve selection board. This would eliminate the present duplicative and administratively burdensome bookkeeping for reserve officers who are considered both by active-duty boards and by nonactive-duty reserve selection boards and would prevent such problems as the "boxtop promotion" under which a reserve officer promoted on active duty loses a grade on return to the inactive reserve because of differing time in grade requirements.

Excluding members on the active-duty list from consideration by reserve selection boards, conversely, would reduce the number of records that are presented to the Army and Air Force reserve boards by approximately 86,000.

S. 1918 would exclude statutory-tour and full-time manning reserve officers, among others, from the active-duty grade-table limitations and the active-duty list. Failure to exclude these reservists would cause problems with the grade table and difficulties in the management of active-duty reserve officers.

S. 1918 would eliminate much of the personnel turbulence experienced in the past during the recall and release actions of reserve officers who satisfactorily participate in a reserve-component program. These officers would retain their dates of rank and could assume a career progression similar to the due-course officer on active duty.

SELECTIVE CONTINUATION PROCEDURES

The bill would continue the concept in present law of mandatory separation or retirement after a specific number of years of service depending upon the grade attained in consonance with the up-or-out system. The mandatory retirement points for officer grades covered by the grade table are 30 years of commissioned service for O–6, 28 years for O–5, and 20 years for O–4.

This compares with present law that normally provides for 30 years for O–6 in all services, 26 years for O–5 in the Navy and Marine Corps but 28 years for O–5 in the Army and Air Force, and 20 years for O–4 in the Navy and Marine Corps and 21 years for O–4 in the Army and Air Force.

Selective continuation short of normal career expectations

Authority would be provided under S. 1918 to convene selection boards for officers in the grade of O–6 with four or more years in grade and for officers in the grade of O–5 who have twice failed of selection for promotion. This change would require that such selection boards, if convened, must retain at least 70 percent of the officers considered. Once retained, an officer would not again be vulnerable to board action for five years. Those selected for early retirement would be retired not later than the seventh month after the report of the selection board has been approved. Officers selected for continuation in the O–5 grade would continue to the 28th year of service and if not sooner selected to the grade of O–6, would be retired at that point. Officers selected for continuation in the grade of O–6 would continue to 30 years and if not sooner selected for flag or general officer rank, be retired.

For the grade of O–4, the grade tables are structured to allow 70 percent promotion opportunity to the grade of O–5. For O–4's twice passed over for promotion to O–5, the bill provides that the service Secretaries could convene a board to consider the officers concerned for continuation. Officers selected for continuation would continue in grade to the normal mandatory separation point of 20 years of service and would not again be subject to board action. Officers not selected for continuation would be separated within seven months following the report of the continuation board and, if not eligible for retirement, would receive separation pay as described further on in this report.

In the Army and Air Force under present law an O–4 is subject to two selections, temporary and permanent. Present law provides that an officer selected for temporary promotion to major must be given an 80 percent selection opportunity to permanent major and if selected for permanent major, is retained until 21 years. While there is not a specific statutory assurance to 21 years, for officers who fail selection for permanent promotion to major, present law has operated in the Army and Air Force in such a way as to provide retention until 21 years of service as a customary procedure. In the Navy where at present the temporary and permanent selection is simultaneous, there is a statutory assurance of 20 years of service.

By setting up the single-promotion system, S. 1918 would abolish temporary promotion and provide for all services a single selection to the grade of O–4.

The committee believes it is important to understand that these various selective-continuation authorities are intended to be used sparingly and are primarily a means of reducing the numbers in senior grades when necessary, such as during a reduction in force.

With the elimination of the temporary promotion system, some provision for forced separation is required. Otherwise there would be no method of thinning the force at senior grades during a reduction in force.

To avoid a reduction of the career expectation for officers currently in the grade of O–4, the committee has provided in the bill that the new selective-continuation procedures would not apply to regular officers in the grade of O–4 in the Navy or Marine Corps or in the permanent grade of O–4 in the Army or Air Force at the time the bill is enacted. For example, a regular major in the Army would retain the career expectation of present law—retention until 21 years of service.

In the case of Army and Air Force regular officers in the temporary grade of major when the bill is enacted, the transition provisions of S. 1918 would provide that if once failed of selection to permanent major, he must again have an opportunity to go before a promotion board within one year of the effective date of the bill. If selected, he would become a major under the new provisions of S. 1918. If he failed of selection, he would be separated under present provisions of law. A temporary major who had not yet been considered for permanent major on the date of enactment would be considered to have been recommended for promotion to major under the terms of the new legislation.

Under present law, as indicated above, temporary majors must be given an 80 percent promotion opportunity to permanent status. The committee wishes to avoid inequitable treatment under the new law that might result if there was significant change in the opportunity to achieve 20 years of service for those in temporary-major grade. The committee, therefore, has directed the Departments of the Army and

Air Force to ensure, for those regular officers serving in the temporary grade of major on the effective date, that the combination of selection opportunity to lieutenant colonel and the continuation rate for those not selected affords an opportunity for service to 20 years of total active service comparable to that which they could have expected under present law. The committee wishes the Departments to clearly understand that this is to be interpreted to mean not less than 80 percent opportunity of retention to 20 years.

The bill does not change the present provision of law creating the so-called 18-year sanctuary; that is, officers with 18 or more years of service may not be forced off active duty before completion of 20 years and eligibility for immediate retirement.

Selective continuation beyond normal career points

In addition to the selective continuation provisions designed for use during a force reduction when retention is too high, the committee included a provision that would address the opposite management problem—retention, especially in specific skills, that is too low. S. 1918, as reported by the committee, would permit officers twice failed of selection for promotion to O-4 to voluntarily remain—*at the discretion of the service Secretary*—until completion of 20 years of service. Similarly, officers twice failed of selection for promotion to O-5 could voluntarily remain—*at the discretion of the service Secretary*—until completion of 24 years of service.

Although this provision would provide a certain amount of flexibility in a service's ability to manage under the grade tables, the discretionary authority to continue passed-over officers is intended to permit the services to meet manpower requirements in specific skills that for a variety of reasons exhibit shortages on a transitory basis. Such a shortage exists currently in the pilot community. In fact, passed over reserve captains are being retained currently in the Air Force.

Alternative career patterns

The provision would also provide flexibility to evaluate alternative career paths for officers in specific career fields.

One of the concerns frequently expressed with the up-or-out system is the belief that it is a more costly system because officers retire earlier and spend a relatively longer period on the retired rolls and replacements must be trained and remunerated.

Certain computer models of various force structures examined by the Department of Defense following questions raised by the committee indicated that the cost is not necessarily reduced by requiring longer periods of service for active duty officers. In fact, the Department of Defense believes it can show that the cost of such systems would be higher. In part, this is because the increased retired pay of those who stay longer on active duty prior to retiring would more than offset the lifetime cost for those of lower rank and fewer years of service who retire earlier even though they are on the retired rolls for a longer period. The Department indicated this would be true even when account is taken of the cost of the early retiree's replacement.

Since the question of cost goes to the heart of many proposals for changes in the up-or-out system, the committee requests the Department of Defense to make an examination of comparative costs of alternative career patterns made viable under the new authority that would be provided under S. 1918 and to submit the results of this examination to the committee.

MANPOWER MODELING

Although the potential changes reflected in S. 1918—as reported by the committee—do not represent a radical departure from the current policies and procedures of the defense officer management system, S. 1918 as passed by the Senate did represent a very radical change. One of the major problems the committee experienced during its recent deliberations on this legislation related to the evaluation of these proposed changes simply because they were so substantial.

The committee believes that models of the military manpower system provide critical insight and understanding of the intricate interrelationship and impact of policy changes. The models used by the Department of Defense and each of the military services are, indeed, helpful in evaluating changes that modify *slighty* the operation of the manpower system. Many of these models, in fact, are very helpful in considering the steady state system.

However, the models are highly disaggregate and, therefore, complex. Further, the complexity is a consequence of modeling in extreme detail the system as it operates today. Therein lies, in the committee's view, one of the major drawbacks associated with current modeling efforts. First, because the models are so complex, it is difficult for the non-analyst to understand and evaluate fully the impact of a major change—to say nothing of the validity of the models. Second, and far more important, models of the nature presently available are incapable of portraying the dynamic near-term and long-term impacts of radically different management systems because the model is designed and developed to examine only marginal changes to the existing system. In other words, the models are so detailed that massive restructuring is needed if substantial modifications are to be modeled properly. This usually cannot be done in a time-frame that will be helpful to the committee or even the military manpower managers.

Another problem with the detailed models is that they are "calibrated", for example, in terms of retention rates or separation rates, based on the system as it has existed in the past. Although these rates are probably applicable—with slight modification—for marginal perturbations to the management or compensation system, revolutionary changes may change the magnitude of these variables not only in direct response to the change but also in indirect, dynamic response resulting from evolutionary changes in the characteristics of the force itself.

S. 1918, as passed by the Senate, provides a case in point. Significant reductions in the number of field grade officers could substantially change promotion opportunity and timing. This could have an adverse effect on retention in the lower grades as career expectations are reduced. However, as retention declines, fewer officers are available to compete for promotion to the higher grades and promotion opportunity increases or promotion timing occurs earlier. This increases the career expectation of a junior group and the cycle is begun again. Although the personnel system will *eventually* reach a steady state, the turbulence experienced in the meantime could prove disastrous.

Models currently available in the Department of Defense are incapable, in the view of the committee, of being used to understand and present dynamics of this nature.

Although not as precise in forecasting the characteristics of future officer management systems, models of a much more aggregate nature could be most helpful in understanding the complex interactions and resulting impacts of radical departures from the current mode of doing business. The committee would have found such a model extremely useful during its deliberations on S. 1918, both in explaining the critical structure of the officer management system and in quantifying the intuitive feelings of the committee regarding the adverse impacts of such a change. The officer personnel system is not a simple linear system in which "cause A" has expected "effect B." The system has many feedback linkages and interactions that can not always be grasped fully without the assistance of a model. A simple model allows intuition to be tested and insight to be developed because the model is transparent, understandable, and efficient (it can be run often, quickly, and at low cost; and it can be modified easily).

The committee is concerned that such models do not exist in the Department of Defense or in the individual services. The committee urges that serious consideration be given to the development of relatively simple, aggregate, and dynamic models to support personnel and compensation proposals in the future. The committee directs the Assistant Secretary of Defense (MRA&L) to report to the committee by March 31, 1981, on the status of the development of such models within the Office of the Secretary of Defense and in each of the services. The intent of this request is not to displace existing models that have been accepted and used effectively in many situations; the intent is to develop a complementary set of models with a more systemic perspective relative to the more parochial perspective of existing models.

SEPARATION PAY

The committee did not wish the new continuation procedures and implementation of the all-regular career force permitted under S. 1918 to go into effect without providing adequate separation pay for officers who might be forced off active duty as a result of this legislation at an earlier time than would have been likely under present law and short of eligibility for retirement. The committee has, therefore, significantly revised the officer separation-pay procedures in current law and provided for a ceiling of $30,000 for such payment.

The separation pay is a contingency payment for an officer who is career committed but to whom a full military career may be denied. It is designed to encourage him to pursue his service ambition, knowing that if he is denied a full career under the competitive system, he can count on an adequate readjustment pay to ease his reentry into civilian life.

Under present law officers separated with more than 5, but less than 20, years of service receive severance pay if they are regular officers, or readjustment pay if they are reserve officers, equal to 2 months' basic pay for each year of service up to a maximum of $15,000. Under current pay conditions the maximum is received by all officers separated involuntarily with 5 or more years of service.

In creating a revised payment procedure for those involuntarily separated, the committee has provided for "separation pay" that would be equal to 10 percent of annual basic pay for each year of service up to a maximum of $30,000. The committee put a ceiling of $30,000 on separation pay in line with the past practice of Congress in placing monetary ceilings on such payments.

Under S. 1918 all of the separation-pay procedures would be provided for in a single proposed new section. The new section would provide for payment of separation pay on the basis of "years of active service" as in present law for readjustment pay for reserve officers. Current law for regular officers is based on commissioned service. The section would provide that should a separated member later become eligible for retired pay, the retired pay would be reduced by excluding from the computation of that retired pay the years upon which the separation pay is based—until the separation pay had been recouped.

The committee believes the revised separation-pay formula in the bill would be more appropriate than the current readjustment- or severance-pay that, in some cases, provides inadequate compensation for those who are separated.

The committee has provided savings provisions in the bill to permit an officer of the armed forces on active duty on the effective date to elect the severance or readjustment pay to which he would have been entitled before enactment or the separation pay under the provisions of the bill, whichever is greater.

GENERAL AND FLAG OFFICER PROVISIONS

S. 1918, as reported, following the precedent of the Officer Grade Limitation Act of 1954, would establish grade ceilings for the grades of O-4 through O-6, but unlike that Act would not address the authorizations of numbers for flag and general officer grades. Those grades would continue to be restricted under other provisions of law. It should be noted, however, that section 811 of the Department of Defense Appropriation Authorization Act for fiscal year 1978 as subsequently amended by section 1003 of the Department of Defense Appropriation Authorization Act for fiscal year 1981 requires a reduction in the number of such officers on active duty so that the number of such officers on active duty on October 1, 1981, does not exceed 1,073. This will require a reduction in the total number of such officers on active duty of approximately 6 percent to be achieved during the preceding four fiscal years.

Although specific grade tables are not included in S. 1918 for general and flag officers, many of the provisions that apply to the promotion and retirement of field grade officers have been extended to apply to general and flag officers. The committee recognizes that this category of executives is in many ways unique and can and should be managed accordingly. The small numbers involved permit this, and the importance of the resource demands this. However, certain features of the general and flag officer management system will, in the committee's view, benefit from changes that conform its operation to that of the field grade management system where possible and from changes that apply the principle of consistency among the services where differences currently exist.

Establishing the grade of commodore admiral in the Navy

The committee noted that the greatest inconsistency among the services in the general and flag officer management system related to the entry level flag officer position in the Navy.

The Navy has not had a one-star rank in the normal grade structure since 1899 although it has had the temporary one-star grade of commodore for use in wartime. This grade was last utilized in World War II.

Background.—Under the present Navy system an officer selected for rear admiral immediately attains the rank of rear admiral and wears the two stars and other insignia of a rear admiral. The Navy divides the rank into rear admiral (lower half) and rear admiral (upper half) for pay purposes. (Rear admiral (lower half) is paid as an O–7 and rear admiral (upper half) as an O–8). Pay grade advancement is automatic from the lower half to the upper half when the officer enters the upper 50 percent of the rear admiral population. Thus the Navy system avoids a positive selection to O–8, and the increase in pay grade can be entirely independent of assignment or job responsibility.

Under the Navy's system the 50 percent rule applies to unrestricted line officers who automatically attain the O–8 pay grade when they are senior to 50 percent of the unrestricted line flag officers. Staff corps and restricted line officers attain the O–8 pay grade at the same time as their respective unrestricted line running mates.

In the committee's view the original rationale for the lack of a one-star rank in the Navy, such as it was, no longer applies. The committee has, therefore, incorporated provisions creating a one-star rank in the Navy that would parallel those in use in the other services and would provide for a positive selection process for officers going from the one-star grade to the two-star grade.

Over the course of the years during which this legislation has received detailed consideration, the Department of the Navy has, with some reluctance, acquiesced to the committee's desire to establish a one-star rank.

With the resolution of this issue, the flag rank in the Navy in ascending order, therefore, would be commodore admiral, rear admiral, vice admiral, and admiral.

Implementation of the provision.—The creation of the one-star rank of commodore admiral recommended by the committee will eliminate the most glaring inconsistency among the services in the selection procedures and at the same time reduce unjustified retirements at the higher grade.

Indicative of the effect of the present system on retirements are statistics showing that during fiscal year 1979 the Navy had only six flag officers retired in the grade of O–7. By contrast, the Army retired a total of 36 general officers, and the Air Force 26, in the grade of O–7.

S. 1918 would require officers to be selected to the two-star rank of rear admiral by a selection-board process. Not more than 50 percent of flag officers would be allowed in the rank of rear admiral or above. These provisions are similar to those currently in effect for the other services. Commodore admirals would not be eligible for selection to rear admiral until they have served at least one year in grade.

Commodore admirals would be retired after 30 years of commissioned service and 5 years in grade. An officer promoted from commodore admiral to rear admiral would not be involuntarily retired until having served 35 years of commissioned service and 5 years in the grade of rear admiral. Again these provisions are equivalent to those of the other services.

It is the intent of the committee that the commodore admiral rank be identified by the wearing of one star and a single broad stripe as used by commodores when the rank was current during World War II. The title and insignia of the two-star rank of rear admiral would remain as at present.

The committee has provided in the bill for transition provisions in line with the overall intention throughout S. 1918 that the rights and entitlements of officers be protected at the level of expectation existing before the enactment of the bill. Therefore, incumbent rear admirals would retain the title and insignia presently held regardless of their relative position on the active-duty list. Those rear admirals in pay grade O-7 when the bill is enacted would attain the O-8 grade in accordance with existing procedures. The career expectation of incumbent rear admirals would remain as under present law.

Promotion of commodore admirals to the grade of rear admiral, as provided by the bill, would occur after incumbent rear admirals on the date of enactment have attained the pay grade of O-8 under the provisions of current law. Therefore, the first selection board for promotion from commodore admiral to rear admiral would take place approximately three years after enactment of the bill; and that selection would mark the end of the transition period for the new procedure.

Other provisions affecting general and flag officers

Other provisions, focused primarily on the management of field grade officers (and discussed elsewhere in this report), would also apply to the management of general and flag officers. The provisions that would be extended to general and flag officer system include those related to the establishment and composition of selection boards, those providing service in grade requirements for promotion of due course officers (one year in grade before consideration for promotion to O-7 or O-8), those related to the establishment and operation of selective continuation and those requiring three years in grade before an officer can voluntarily retire in that grade.

In addition, specific authority would be provided for the President to vacate the promotion of an officer to the grade of O-7 within 18 months of that promotion. This provision is consistent with current Army and Air Force statutes and would insure a degree of control over this highly valued managerial resource.

Audit of general and flag officer requirements

The Senate Armed Services Committee, in their report on the Department of Defense Appropriation Authorization Act for fiscal year

1981, established a requirement for the Department of Defense to submit a report by March 1, 1981, that would, among other things, recommend a methodology for reviewing and validating at least 25% of its general and flag officer resources annually and also to reallocate 24 current general and flag officers among the services. It is the committee's belief that senior executive service civilian positions should also be included in the development of the review and validation methodology and that the review of the resource each year should be expanded to encompass the entire resource. This would provide for a complete audit of top management requirements in the military services and would recognize that there may be good reasons for different distributions of military and civilian high level resources among the different services.

The committee requests the Secretary of Defense to report to the House Committee on Armed Services by March 1, 1981, on the basis of the methodology and reallocation—including the effect on total military and civilian positions in each service.

EQUALIZATION OF TREATMENT OF FEMALE OFFICERS

S. 1918 would repeal long-standing provisions of law that contain unwarranted distinctions with respect to female officers. The bill would provide for equalization of treatment of female officers as regards appointment, promotion, accountability and mandatory retirement.

Women in combat

Special provisions of law relating to female personnel that are not changed by the bill are those that exclude women from assignment to vessels or aircraft engaged in combat missions from assignment (other than for temporary duty) on Navy vessels other than hospital ships, transports, and vessels of a similar classification not expected to be assigned to combat missions (sections 6015 and 8549 of title 10, United States Code). Since the Congress elected not to change these restrictions on women going into combat in passing the Equal Rights Amendment, the committee does not propose in the present bill to change these sections of law.

The bill would otherwise remove all differences of treatment based on gender.

Organizational reform

The bill would provide for the abolition of the statutory authority for the Women's Army Corps (WAC). At the same time, the bill would eliminate restrictions on the elements in which women officers can serve in the Army. The committee believes that having a separate corps is a vestige of the time when women were not treated equally and that such a corps is inconsistent with the insistence on equal treatment. Each female officer in the future, like each male officer, will be a member of some functional corps of the service. In fact, the Army, through a reorganization order pursuant to section 125 of title 10, United States Code, has administratively accomplished this goal. The bill would remove the last vestige of this differentiation.

The bill would abolish the positions of Assistant to the Chief of Naval Personnel for Women and Director of the Women Marines; and while the Air Force does not have a legal basis for Director of Women in the Air Force, it has previously abolished the job in line with the equalization philosophy.

Present law allows the Secretary of the Army to prescribe the authority of WAC officers; this would be eliminated. The bill would give to officers of the Army nurse corps and medical specialist corps and to nurses and medical specialists in the Air Force the same entitlement to command as other officers performing medically related professional functions. In other words, under the bill officers in all four services, male and female, in the nurse and medical-specialist areas, would have the same authority. The bill would not change those provisions of title 10 that prevent such officers from exercising command over nonmedical personnel.

Appointment of female officers

Present law restricts the appointment of women officers in the Army to the Women's Army Corps and the medical, dental, nurse and medical specialist corps. This restriction would be eliminated by S. 1918, and women would be eligible for appointment to all of the corps in the Army. Likewise, Navy laws that restrict the appointment of women within certain categories of assignment would be eliminated. The Air Force has no such restrictions in present law on the appointment of female officers.

The bill would eliminate those provisions of law that account for officers solely on the basis of gender, and it likewise would eliminate the definition of dependent in law in the cases where the definition is solely to define dependents of female officers.

The bill would eliminate separate provisions for grade determination and service credit now applying to female officers in the nurse and medical specialist categories.

The bill would eliminate any sex distinction regarding procurement of aviation cadets.

Promotion of female officers

Under S. 1918, female officers would compete for promotion to all grades with their male counterparts in standard promotion zones. The bill would provide that the service Secretaries may add competitive categories to those originally established by the bill; but these are to be limited to categories requiring special training or experience in unique circumstances and are not to be used to effect special treatment for female officers.

Present law provides separate promotion provisions for women in the Army, all of whom are in the Women's Army Corps or nurse or medical specialist corps (except for doctors and dentists), and separate provisions for women officers in the Navy and Marine Corps. The Air Force presently has no legal restrictions on the promotion consideration of female officers.

S. 1918 would eliminate references in law to female officers on selection boards.

Current law allows women in the Army and Air Force to be considered for promotion to flag rank along with other officers; that is, a woman can be selected as a brigadier general or major general, the rank attaches to her, and she retains it regardless of her assignment. In the Navy and Marine Corps, current law limits women to spot promotions to flag rank: that is, a woman can be promoted to the grade of rear admiral or brigadier general if she is selected for a particular job that carries that rank. On completion of that assignment, if not assigned to another rear admiral or brigadier general position, she reverts to the grade of captain or colonel.

S. 1918 would eliminate this separate treatment of women in the Navy and Marine Corps: henceforth they would be promoted to flag and general rank in the same way as male officers.

Separation and retirement of female officers

The bill would eliminate separate retirement provisions and differences in the time calculations for mandatory-separation procedures for female officers. Unchanged would be the provisions of law permitting involuntary separation for reasons of pregnancy or dependency. However, present Defense Department policy is that separation for pregnancy is only to be on a voluntary basis.

APPOINTMENT AUTHORITY

S. 1918 would provide common general authority for the permanent appointment of officers by the President with the advice and consent of the Senate. In so doing the bill would standardize basic qualifications for appointment, including minimum and maximum age for initial appointment. In the past the services have had differing provisions of law regarding appointment authority.

The basic qualifications for appointment as a regular officer would require an individual to be a citizen of the United States, be able to complete at least 20 years of active commissioned service before the 55th birthday (except medical and dental officers and those appointed as chaplains), be of good moral character, be physically qualified and have "such other qualifications as the Secretary concerned may prescribe."

The reference to "such qualifications as the Secretary concerned may prescribe" is a restatement of similar language presently contained in title 10, United States Code (sections 3285, 5573(a) and 8285). Under this authority the Secretary concerned may prescribe minimum physical standards, educational requirements or appropriate accreditation for the original appointment of specialists.

The bill also would provide for the temporary appointment of officers by the President alone in war or emergency declared by the Congress or the President. This is not intended to be a temporary promotion system as exists today but would provide for the appointment of temporary officers from civilian life, or from commissioned officer, warrant officer, or enlisted status. The temporary commission would automatically expire two years from the date of the appointment or within six months after the end of the war or emergency, whichever is earlier. Reappointment of officers whose temporary appointment expired may be made.

CONSTRUCTIVE SERVICE CREDIT

"Service credit," or, as it is more commonly called, constructive service credit, is awarded to officers on being appointed to commissioned status to provide an adjusted position on the active-duty list for the purposes of determining grade and seniority in relation to other officers. Constructive service credit is a way of recognizing time invested in additional preparation for professional status and is awarded to officers entering service when that advanced preparation, beyond the bachelor degree, is a prerequisite to his or her being appointed as an officer in a professional specialty.

Constructive service credit allows the services to bring professionals into the service at a rank level comparable to their contemporaries. For example, an individual who spends seven years in school, three years undergraduate and four years in dental school, if given three years constructive credit when appointed as a dental officer, will enter at a grade comparable to his contemporaries who entered service immediately after completing a four-year baccalaureate program.

The committee found that present law and current administrative practices were confusing, inconsistent and inequitable in their application of constructive service credit to different professional groups in the separate services. The committee recommends in S. 1918 a "system" that would provide uniformity and equity in the application of constructive service credit and at the same time would eliminate the use of constructive credit where such use is no longer appropriate.

The following table illustrates the practice under present law for providing constructive credit in the several services among certain health-related professions:

A COMPARISON OF ENTRY GRADE CREDIT FOR PRIOR-TO-SERVICE EDUCATIONAL EXPERIENCE

	Present entry credit (years commissioned service)			Present entry grade (pay grade)		
	Army	Navy	Air Force	Army	Navy	Air Force
Doctor of medicine	4	4	4	0-3	0-3	0-3
Doctor of dental science	4	4	4	0-3	0-3	0-3
Doctor of veterinary science	4	NA	4	0-3	NA	0-3
Doctor of optometry	2	2	2	0-2	0-2	0-2
Doctor of podiatric medicine	2	2	2	0-2	0-2	0-2
Doctor of philosophy (clinically oriented)	4	3	4	0-3	0-2	0-3
Doctor of philosophy (administratively oriented)	None	3	None	0-1	0-2	0-1
Masters degree (clinically oriented)	2	2	2	0-2	0-2	0-2
Masters degree (administratively oriented)	None	2	None	0-1	0-2	0-1

The basic provision

The committee emphasizes that constructive credit should be limited to officer categories requiring advanced education as a prerequisite for appointment as a commissioned officer. The legislation would provide constructive credit on a year-for-year basis for each year of education normally required beyond the baccalaureate level where the term "normally required" is intended to mean the stated minimum requirement of the majority of schools in the professional discipline concerned.

To illustrate how the provision works, if the advanced schooling is for four years and the undergraduate education required for entry into the advanced schooling is three years, the total would be seven years. Since the normal baccalaureate requirement is four years, the officer would be eligible for three years of constructive credit that is, one year for each year of qualifying advanced education beyond the normal baccalaureate level.

Additional credit for health professionals

The bill would provide for additional credit for health professionals where appropriate to recognize a particular situation.

Extensive examination by the committee revealed that the "stated minimum requirement" often did not reflect the true requirements in the health professions. The minimum preprofessional education actually attained by students entering health professional schools was such as to indicate that in many instances there existed a de facto requirement above the minimum stated in the literature of the schools concerned. This is demonstrated in the following table:

AMERICAN PREPROFESSIONAL TRAINING

[In percent]

Profession	Minimum preprofessional training requirements (percentage of schools)			Actual student preprofessional training at time of entry			
	2 yr	3 yr	4 yr	2 yr	3 yr	4 yr	Over 4 yr
Physicians[1]	6.8	81.2	12.0	1.5	8.2	83.1	7.2
Dentists[2]	39.0	54.2	6.8	.8	9.7	83.6	5.9
Veterinarians[3]	59.1	40.9	0	8.5	23.5	37.6	30.4
Optometrists[4]	75.1	25.0	0	12.2	20.0	63.2	4.6
Podiatrists[5]	40.0	60.0	0	1.5	4.0	89.1	5.4

[1] American Association of Medical Colleges, entering class 1976–77 for minimum requirements and 1975–76 actual entering years. 16 schools also had special programs where a limited number of students could enroll at some earlier point then represented here, as in a combined 6-yr undergraduate medical school program.

[2] American Dental Association, entering class 1976–77.

[3] American Veterinary Association, entering class 1976–77.

[4] American Optometry Association, entering class 1976–77.

[5] American Podiatry Association, entering class 1976–77.

For example, while 89 percent of the medical schools in the country state in their written material a requirement of three years or less for entry, the committee found that in actual practice over 83 percent of the entering classes, for the 1976–79 reporting period, had four years of undergraduate training.

The committee, therefore, has added to the basic provision of the bill a mechanism to allow awarding of additional credit when the overwhelming majority of schools are, in fact, demanding a level of preparatory education above the stated minimum. This additional feature would provide additional credit of one year for advanced education in the health professions if the number of years of baccalaureate education completed by 75 percent or more of the entering students exceeds by one or more years the stated minimum requirement. However, an individual may receive additional credit only if his undergraduate training does, in fact, exceed by one or more years the minimum stated requirement. The committee does not believe an individual should be given credit for more time than is actually spent in additional schooling.

Under present law the professions of medicine, dentistry and veterinary medicine receive four years of constructive credit and the professions of optometry and podiatric medicine receive three years. Under S. 1918, the constructive service credit would be four years for doctors, dentists and podiatrists, and three years service for veterinary medicine and optometrists—based on the most recent statistical data on training in those professions. The committee believes it has arrived at a formula that provides for equity of treatment among the several health professions, provides due recognition of the actual educational requirements experienced by officers recruited in these health professions, and has the flexibility to allow adjustment of credit as changing conditions might dictate.

The computation to determine when 75 percent or more of an entering class exceeds the stated minimum requirement would be performed by the Department of Defense on an annual basis for each discipline from the data for the year in which the person considered was admitted to the professional school.

Credit for advanced professional training

Constructive service credit is presently awarded for civilian internship and residency training but is limited to physicians and dentists. S. 1918 would provide credit of not more than one year for civilian internship or equivalent graduate medical, dental or other formal professional specialty training when required by the armed forces. In addition, one year of additional credit would be authorized for each additional year of civilian graduate-level training or experience creditable toward certification in a specialty required by the armed forces. Thus, the bill would continue present policy to recognize advanced training beyond the basic professional qualification that can be useful to the armed forces and at the same time would provide for equitable application of such provision among health professions.

The bill would also allow for additional credit in unusual cases based on a person's special experience in a particular field. Under this authority, the military departments, as appropriate, could bring onto active military service professionals, advanced in their civilian careers, at a level appropriate to their professional prestige and experience.

Additional constructive credit for JAG officers

The committee adopted a provision of the bill as it passed the Senate that would authorize the Secretary of Defense, upon determining that the number of judge advocates in the grade of captain or Navy lieutenant and below is critically short, to award such additional constructive credit as necessary to result in the appointment of such officers in the grade of captain or Navy lieutenant upon entry onto active duty.

Although this provision deviates significantly from the fundamental principles underlying the concept of constructive credit accepted by the committee, the committee retained this provision but with the intent that it would only be exercised in the most unusual circumstances where the critical and extended shortage in junior judge advocates can best be alleviated through additional constructive credit. In other words, this provision provides an option for addressing a shortage should it arise—but by no means should it be considered to be the only option.

Purposes for which constructive service is used

Constructive service credit would be used for determining the entry grade, the position on the active-duty list, seniority in grade and service in grade for promotion eligibility and selective continuation.

At the present time medical and dental officers use constructive credit for longevity pay purposes; that is, to compute longevity for determining the level of basic pay and allowances. S. 1918 would eliminate the crediting of constructive service for longevity pay purposes in the future. The use of constructive credit for longevity pay purposes originated as a device for providing an increase in the income of physicians and dentists in the armed forces predating the awarding of continuation pay to physicians and dentists and variable incentive pay, under which physicians received bonuses of up to $13,500 per year. The committee does not believe that use of constructive credit for longevity pay purposes is any longer appropriate—especially in view of the recent restructuring of the special pay system for military health professionals (Public Law 96–284) developed by the committee.

The committee wishes it to be understood that it does not intend for the bill to result in an adverse economic impact on the health professionals that would lessen expected improvements in career retention from the special pay legislation recently passed. However, the committee believes that any extra pay that is needed to assure adequate retention of these health professionals should be applied "up front" and be clearly identified in appropriate legislation as additional pay required for retention. The committee, while eliminating constructive service credit use for longevity pay purposes for newly entering physicians and dentists, has provided a saving clause to allow physicians and dentists on active duty to continue using their constructive service credit on the basis it was credited to them on the effective date of the bill.

In the past physicians and dentists have been allowed to use their constructive service credit in their retired pay multiplier. S. 1918 would provide for the elimination of this practice in the future. The committee does not believe it is appropriate to allow use in the retired pay multiplier of time spent in preservice schooling. In addition to being unjustified on equity grounds, the procedure is an example of poor personnel management since it works as anti-retention device. For example, an officer with 25 years of active service and 5 years of constructive credit is eligible for the same retired pay as an officer with 30 years of service. Since an officer at 30 years of service has earned the maximum retirement multiplier to which military personnel are eligible, the medical or dental officer with 25 years of service does not have sufficient incentive to remain on active duty for a full career and is encouraged to leave service earlier than might otherwise be the case.

In this instance, also, the committee has provided a saving clause to allow medical and dental officers on active duty to continue to compute their retired pay and basic pay on the basis of credit available to them prior to enactment of the bill.

SELECTION BOARD PROCEDURES

S. 1918 would consolidate in one place in the law the existing statutory provisions for each of the services pertaining to selection board composition and operation. The bill would provide authority to the Secretary of the military department concerned to convene boards;

it would set board composition and provides for notification to eligible officers of promotion zones and convening dates. The bill would also provide standard language for the oath to be taken by members of boards and establish board reporting and reviewing procedures.

S. 1918 would also set forth the information that the service Secretary is to furnish the board. Generally this would include the number of officers in each competitive category, the names of all officers to be considered by the board for promotion to the next higher grade, the pertinent records of officers whose names are furnished to the board and "such guidance as may be necessary to enable the board to properly fulfill its functions."

Although the statutory provision for the Secretary to furnish guidance to boards would be new, the furnishing of such guidance has been practiced in the past; the language here would not set a new precedent. Each of the service Secretaries is charged by present law with the efficient management of his service. He has commensurate authority to interpret the needs of the service in view of changing conditions and requirements and to translate those needs into appropriate guidance for board members, who are each sworn to make their recommendations "having in view both the special fitness of officers and the efficiency of his armed force."

It is not possible to anticipate and put into law language to cover all circumstances that could be the subject of Secretarial guidance. Of necessity selection boards will, from time to time, require guidance such as on technological or special requirements of a particular service. The bill requires the Secretary to specifically furnish information relating to the skill needs of the armed forces. The bill would also require that the guidance furnished be consistent with provisions that govern the selection and promotion of officers. For example, the guidance will have to conform to the concept of equity between promotion categories and provide consistency in promotion opportunity from year to year.

Competitive categories

The bill would provide specific authority to the service Secretaries to establish competitive categories for promotion for each service consistent with guidance from the Secretary of Defense. Examples of existing competitive categories are physicians, nurses, medical service corps officers, chaplains, judge advocate general officers, restricted line officers and limited-duty officers. These separate promotion categories are needed for various groups of officers whose extensive training and experience and often relatively narrow utilization makes it impossible for them to compete for promotion on an equal footing with other officers having more generalized experience. Otherwise it would be difficult to attract and retain high-quality new officers with the desired specialized training in particular skill areas if the promotion opportunity were too severely limited.

S. 1918 would permit competitive categories to be established under regulations prescribed by the Secretary of Defense for officers performing functions requiring special training or experience. Such generalized authority is available now only to the Air Force (under sections 8296 and 8067 of title 10, United States Code). The other services at present must secure a change in the law to establish a new promotion category or to terminate or modify an existing category.

Although this authority would be used initially to preserve existing competitive categories—and it is the committee's intent that this be done—the committee would stress that it intends that this authority be used sparingly in the future and that additional promotion categories be created only after the most careful consideration of the impact of such action and only after the service Secretary concerned determines that it is necessary in the best interests of his service and consistent with the guidance from the Secretary of Defense.

S. 1918 would require that promotions be made to fill vacancies—in the specific competitive categories. This may result in the actual promotion being made at an earlier or later point than it would have been made under a system where the promotions are from a single list. However, the committee believes that individuals who are competing for promotions in a particular competitive category should be promoted to fill the vacancies in that competitive category as they arise. Today's single promotion list provides an unwarranted advantage to officers in a competitive category with slow turnover at the expense of officers in a competitive category with rapid turnover.

Reserve officer representation on selection boards

The bill, as reported by the committee, would require at least one reserve officer on a selection board convented to consider a group of officers that includes reserve officers. The committee was disturbed by promotion difficulties encountered in the past as the result of constituting boards without reserve officers as required under law and wishes to make very clear to the Department of Defense that it does not expect such procedures inconsistent with law to occur in the future.

The committee recognizes that, especially on general officer boards, the ability to achieve this goal will be difficult if not impossible. Consequently, the legislation would require at least one reserve member on the selection board except that in the case of a board considering officers for promotion to the grade of O–7 or O–8, no reserve officer need be included if there are no reserve officers on active duty in the grade to which the board will recommend officers for promotion who are eligible to serve on the board. The exception is needed, for example, in the case where the only reserve officers available on active duty have served on the previous selection board thereby making them ineligible.

Selection below-the-zone

Accelerated promotion opportunities for exceptional officers would be continued under S. 1918 as reported by the committee. The bill would permit up to 10 percent of the number of promotions to any grade above O–3 by any one selection board to come from officers junior to those in the primary promotion zone. The Secretary of Defense would be permitted to authorize a greater number—up to 15 percent—if he determines that the needs of the service so require.

Present law provides for 5 percent below-the-zone selection opportunity in the Navy and Marine Corps. It does not provide for below-the-zone promotion in the permanent system in the Army and Air Force. However, there is no restriction in present law on the percentage of below-the-zone selections for a temporary promotion in the

Army and Air Force, and the Navy and Marine Corps law is suspended by executive order.

For officers who are promoted in "due course," in other words, "in the zone," minimum service in grade must be attained. Promotion to O–2 and O–3 requires 18 months and 2 years respectively. Officers promoted in the zone—the so-called due course officers—must serve at least 3 years in grade before they can be considered for promotion to O–4, O–5, and O–6 and 1 year in grade before they can be considered for promotion to O–7 and O–8. The bill contains a provision authorizing the Secretary of the military department concerned to waive the service-in-grade requirement, however, to *permit* a minimum of two below-the-zone considerations for promotion to O–4, O–5, and O–6.

The committee does not view these service-in-grade criteria (especially in the junior grades) to be standards but rather minimum thresholds that must be met for promotion. Thus, although the service-in-grade requirements in the bill would permit promotion to O–3 after 3½ years, the committee expects this minimum timing to be used only when the needs of the service require such rapid promotion.

On the other hand, the committee does not wish to hamper the below-the-zone system for promotion of outstanding officers; and consequently, these time-in-service requirements do not apply to below-the-zone selection.

MISCELLANEOUS PROVISIONS

The bill contains several other provisions not described above: two of the more important are discussed below:

Secretarial authority to establish staff corps

Current law establishes specific staff corps (primarily in the Navy) and authorizes the Secretary concerned to appoint officers to these corps. For example, today all services have either a medical corps, dental corps, judge advocate general corps and the chaplains corps or the authority to appoint officers as medical officers, etc. In addition, the Navy has a supply corps, engineering corps, nurse corps, medical services corps, etc.

The legislation would repeal specific statutory authority for many staff corps. Statutory authority for the medical, dental, judge advocate general, and chaplain corps which are extant in all the services today, would be retained. The Secretary of each military department would be provided authority to create additional staff corps consistent with uniform direction from the Secretary of Defense and authority to appoint officers to these corps.

The committee intends this authority to be used initially to establish the same corps that exist today in each service the authority for which would be repealed by this legislation. The committee views the establishment of corps as an administrative function, primarily to delineate competitive categories and, therefore, believes that the authority to establish and appoint to corps is best left to the individual services.

The statutory authority for a number of staff corps would not be repealed at this time because certain legal responsibilities and authorities pertaining to individuals holding those positions are also included in these provisions of law. However, in line with the general view of the committee regarding staff corps, the Assistant Secretary of Defense

(MRA & L) is directed to initiate a joint service study with the objective of proposing subsequent legislation designed to eliminate individual statutory authority for staff corps that are unique to an individual service. Such a legislative proposal should be transmitted to the committee by December 31, 1981.

Grade at retirement

Current Army and Air Force statutes require that an officer serve at least 6 months in a temporary grade before being eligible to retire in that grade. Current policy requires that an officer serve 2 years in grade before being eligible to retire voluntarily in that grade.

The bill would require that an officer below grade O–9 serve 3 years in a grade before being eligible to retire voluntarily in that grade. Involuntarily retirees would be required only to serve 6 months to be retired in that grade. Further, in unusual circumstances the President—and only the President—would be able to waive the 3-year requirement for voluntary retirement in a particular grade. The committee would consider retirements for hardship or humanitarian reasons to fall in this category but would expect this waiver authority to be used sparingly and judiciously.

TRANSITION AND SAVE-PAY PROVISIONS

When legislation is enacted that makes major changes in the military personnel management and career programs of those in service, the committee believes appropriate transition and save-pay provisions are desirable.

S. 1918 contains provisions that are designed to effect an orderly transition to the new officer-management system and to protect the equities of those now in service. The more important of these are summarized here:

Placement on the active-duty list

The first step in this transition involves placing all officers, both regulars and reserves (except those reserves on active duty for training or involved in training and administering the reserve components), on the "active-duty list." This would be accomplished within six months of enactment. This list determines future eligibility for promotion consideration.

Transition promotion provision

After enactment of the legislation, all new promotions would be under the new single-step promotion system. Officers holding temporary grades higher than their permanent regular or reserve grade would hold the higher temporary grade under the new system. Officers who, on the date of enactment, have been selected for promotion but not yet promoted would be considered to have been selected for promotion under the new law.

Mandatory retirement and separation

The mandatory retirement and separation provisions of S. 1918 would apply to all grades except as set forth below:

Regular Army and Air Force officers who, on the date of enactment, are serving as, or have been scheduled for promotion to, permanent major, lieutenant colonel or colonel, would, unless later promoted to a higher grade or selected for noncontinuation under the new law, be retired at 21, 28 or 30 years of service as the case may be under the current law.

Regular officers who are serving in, or selected to, the permanent grade of major (and not serving in a higher temporary grade) in the Army and Air Force as well as officers serving in, or selected to, the grade of lieutenant commander in the Navy and major in the Marine Corps on the date of enactment would not be subject to mandatory retirement until they have completed 21 and 20 years of service respectively.

Army and Air Force officers holding a permanent grade below lieutenant colonel who have received one failure of selection for promotion to the next higher permanent grade as of the date of enactment would receive a second consideration within one year. If not selected at that time, they would be retired or separated in accordance with laws existing prior to enactment.

IMPLEMENTATION

The committee recognizes that, even though this legislation has been considered over an extended period, technical errors and inconsistent policy direction might become apparent as the services grapple with the formal implementation. Consequently, the committee invites the Department of Defense to submit any needed legislation to address these anomalies early in the 97th Congress. This legislation should be restricted to modifications that will correct these anomalies, but if a strong case can be made for more substantive change, a *limited* number of such changes could be considered.

The legislation would become effective the first day of the seventh month following the month of enactment. The committee believes that an extended time frame for implementation is needed for such a complex change. This would also provide time for congressional action on further legislation needed to clarify the intent of this bill and for the services to formulate their regulations.

The grade tables would be fully effective on September 30, 1982. To ease the transition to these new, lower tables, the services would be required by September 30, 1981, to reach a level half way between actual levels in effect on September 30, 1980, and required ceilings in effect on September 30, 1982. In some cases, the new grade ceilings are higher than current levels. In those cases, although there is no limitation in the legislation, the committee expects that the services will not move to those new, higher levels with any more alacrity than which they move to the grades that are more constrained.

COMPENSATION INITIATIVES

The bill as reported by the committee contains several compensation initiatives in addition to the provisions described above addressing the officer personnel management system.

Per diem equity

An inequity exists, today, between enlisted members and officers who are assigned to temporary duty (TDY) regarding their compensation while in a travel status. Per diem is normally paid when members of the armed services are temporarily assigned away from their home duty station. The inequity stems from the entitlement or lack of entitlement to Basic Allowance for Subsistence.

When assigned TDY, an officer continues to draw the Basic Allowance for Subsistence to which entitled when at a home duty station. In addition, the officer also receives a per diem allowance calculated to cover the expenses incurred as a consequence of the travel (meals, lodging, incidental expenses).

The enlisted member traditionally receives meals at a home duty station in government messing facilities. When government messing facilities are not available or when the enlisted member lives with his family, a Basic Allowance for Subsistence is provided. However, regardless of the circumstances, an enlisted member when assigned TDY loses eligibility to the Basic Allowance for Subsistence.

Thus, the officer receives both Basic Allowance for Subsistence and per diem while the enlisted member receives only per diem when assigned TDY. This is the inequity.

S. 1918 would eliminate this inequity by providing the Basic Allowance for Subsistence to all enlisted members assigned TDY in addition to per diem. Both officers and enlisted members would be treated the same while assigned TDY.

Save pay for dental officers

As a result of enactment of Public Law 96–284, the Department of Defense regulations governing the payment of special continuation pay for military dental officers were fixed as they were in effect on April 1, 1980. Those regulations provide an annual bonus of 4 months' basic pay to dental officers with over 3 years of service except in two cases: Only 2 months' basic pay is provided (1) when the dental officer is engaged in residency training and (2) when the dental officer reaches 20 years of service but is not specialty trained. The basic pay scales upon which these bonuses are computed are those in effect on October 1, 1979. The exceptions were first specified in regulations effective October 1, 1979; before that, 4 months' basic pay was provided in both cases.

Unknown to the committee at the time that the bill addressing special pay for health professionals was being developed was that a change to the regulations was being coordinated within the Department of Defense intended to prevent a reduction in pay to senior dentists who were not specialty training and who were approaching 20 years of service. Unfortunately, the regulations could not be changed administratively, even to correct this inequity, once the regulations were frozen by Public Law 96–284.

S. 1918 would amend Public Law 96–284 to provide a save pay provision for this small number of senior dental officers. This provision would insure that a dental officer would receive no less total pay (basic pay plus special continuation pay) at any time in the future under the provisions of Public Law 96–284 than the total pay (basic pay plus special continuation pay) that would have been received under the regulations in effect on September 30, 1979, and the basic pay rates in effect on October 1, 1979. This save pay provision will eliminate the possibility of a sharp reduction in pay (although pay for this category will not increase as rapidly as might be expected) while at the same time allow for an orderly and expeditious transition to the regulations frozen by law. This save pay provision is similar to that which applies to medical officers affected by Public Law 96–284.

Special pay Reserve medical officers

Another unintended result of the enactment of Public Law 96–284 is a reduction in the special monthly pay for medical officers in the Reserves. The change accomplished in this public law was to specifically address the restructuring of the special pays for *active duty* medical officers. The restructuring of the special pays for Reserve medical officers was left for separate and future consideration when more complete information would be obtained.

However, the public law has been interpreted in such a way as to cause the special pay for Reservists to be gradually eliminated; this was not the intent of the committee. Therefore, S. 1918 would amend Public Law 96–284 to continue the operation of the special pay system for Reservists on active duty for training as it applied before the date of enactment of the public law.

DEPARTMENTAL DATA

This legislation is an outgrowth of a proposal by the Department of Defense as submitted to the 94th Congress. The present Administration supports legislation such as S. 1918 as reported by the committee. Although different from a legislative proposal submitted early in the 96th Congress, the legislation as reported is similar to that proposed in many ways.

A letter from the Department of Defense describing the original proposal of the department is set forth below:

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., April 26, 1979.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: There is forwarded herewith a draft of proposed legislation "To amend titles 10 and 37, United States Code, relating to the appointment, promotion, separation, and retirement of members of the armed forces, and for other purposes."

This proposal is a part of the Department of Defense Legislative Program for the 96th Congress. The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this proposal for the consideration of the Congress and that its enactment would be consistent with the Administration's objectives.

This proposal represents a major change to and modernization of the officer personnel laws, largely unchanged since the Officer Personnel Act of 1947. Enactment of this legislation will provide new grade limitations and other related officer management system changes discussed in the Secretary of Defense's Report to Congress on Officer Grade Limitations, submitted on May 30, 1973 in compliance with Public Law 92–561.

It is recommended that this proposal be enacted by the Congress.

PURPOSE OF THE LEGISLATION

The purpose of the proposed legislation is to revise the laws which govern the management of commissioned officers serving on active duty in the Army, Navy, Air Force, and Marine Corps below the grade of brigadier general or rear admiral. The bill would:

—Establish new statutory limitations on the number of officers who may serve in senior grades below flag rank;

—Provide common law for the appointment of Regular officers and for the active-duty service of Reserve officers;

—Provide uniform laws for promotion procedures for officers in the separate services;

—Establish common provisions governing career expectation in the various grades; and

—Establish common mandatory separation and retirement points.

The current laws governing the appointment, promotion, retirement, and separation of commissioned officers and the numbers permitted in each grade are distinctively separate for officers of each military department and contain many unwarranted differences both in substance and effect. These differences have resulted from the respective historic origins of the statutes and generally do not reflect differences in actual management needs existing today. This legislative proposal would provide common statutes to eliminate undesired deviations and encourage a more uniform interpretation and application of these laws. With respect to those existing statutes which include provisions governing officers serving in the grade of brigadier general or rear admiral and above, with the exception of creating a one-star grade of commodore in the Navy, only those technical amendments needed to continue the present operation of the law for these officers have been proposed.

In recognition of the existing need to review the officer promotion system, the Secretary of Defense on August 9, 1972, directed that a Department of Defense Study Group be convened to (1) provide recommendations for an improved officer personnel management system, and (2) identify actions necessary to implement these recommendations. The membership of the study group included the Assistant Secretaries (Manpower and Reserve Affairs) for the Military Departments, the Deputy Chiefs of Staff for Personnel, and appropriate representation from the offices of the Joint Chiefs of Staff and the Secretary of Defense.

The findings and conclusions of this Study Group formed the basis for the Secretary of Defense's report to Congress, the Officer Grade Limitation Report cited above, as well as this proposed legislation. The primary objectives of the officer personnel management system which have been formulated are not markedly different from those of the Officer Personnel Act of 1947 and the Officer Grade Limitation Act of 1954. Specifically, the system objectives are:

—To allow the services to meet requirements for officers in the various grades at ages conducive to effective performance.

—To provide career opportunity that will attract and retain the number of high caliber officers needed.

—To provide career opportunity which is reasonably consistent among the four services.

In summary, the proposal would establish a visible and consistent officer personnel management system for commissioned officers serving on active duty, providing the flexibility to be responsive to changing officer requirements at various strength levels which result from increases or decreases in basic force structure while at the same time striking the delicate balance between management objectives and equitable individual career expectations.

Major provisions

Consistent with these objectives the major provisions that will be established by this legislative proposal are as follows:

Revised permanent grade authorizations

Based on recognition of the size of the active duty officer force which has been required to meet National security needs since 1947, revised statutory grade limitations for officers on active duty in grades O–4, O–5, and O–6 have been developed which will replace both the permanent regular limits of the Officer Personnel Act of 1947 and the temporary promotion grade ceilings of the Officer Grade Limitation Act of 1954 (OGLA).

The limitations will permit adequate manning of Defense senior officer requirements over a range of officer strengths while at the same time providing reasonable and consistent career opportunity within and between the officer corps of each service. To accomplish this dual purpose the tables have retained the sliding-scale principle in OGLA, which provides that the percentage of field-grade officers does not increase or decrease as rapidly as changes in the total strength of the officer corps as a whole.

Most importantly, it should be recognized that the grade tables do not commit the Congress to any level of officer strength. Once the Congress determines the appropriate force level during the annual authorization process, then these tables will determine the maximum grade distribution at that force level. Therefore, the tables should be considered as an umbrella or permanent upper grade limit. They are not intended just to meet current force structure requirements but are designed to be a flexible management tool which allows long-range management of the officer corps and control of the senior grades.

A significant change reflected in these new grade limitations is that Reserve officers ordered to active duty in time of war or a National Emergency declared after January 1, 1979, will not be included in the grade limitations until six months after the end of the war or period of National Emergency which give rise to their mobilization. This will avoid the problems associated with attempting to integrate Reserves into a grade table not designed to accommodate them and will greatly ease and facilitate their lateral transition to and from active duty.

Finally, the grade limitations represent a particularly significant change for the Navy. Currently, Navy restricted line and staff corps officers are not subject to direct grade limitations but are controlled indirectly by their relationship to officers of the unrestricted line. This proposal will place restricted line and staff corps officers (with the exception of physicians and dentists) under direct grade control.

Exclusion of certain categories from strength and grade ceilings

In keeping with the principle in present law, the proposed legislation excludes certain categories of officers serving on active duty from total strength accountability and from the ceilings on the number of commissioned officers on active duty in each of the controlled grades (O-4 through O-6). The proposed legislation, however, consolidates common language in two sections of law applying to all services and provides for uniformity in exclusions. Officers who are neither accounted for nor paid from the Military Personnel Appropriation are excluded from total strength accountability. Officers who are out of the normal active duty promotion career path are excluded in computing and determining strengths in the controlled grades (O-4 through O-6).

Exclusions from grade table accountability in current law total 13 percent of the total active duty commissioned officer strength, while under the proposed legislation exclusions are reduced to seven percent.

Improved management and equity for Reserve officers

Within the total Defense force two components must be maintained to meet our military requirements. These two components, the active duty component and the non-active duty Reserve component, require compatible but different management systems that will provide for ease of lateral movement between the components during peacetime and wartime. The proposed legislation provides a balance between Defense objectives and greater individual equity for Reserve officers. With respect to the active duty component, a single active-duty list is established in each service encompassing all officers on active duty (both Regular and Reserve) which will be used for determining eligibility for promotion consideration by active duty selection boards. Reserve officers on the active-duty list are excluded from consideration by Reserve selection boards, eliminating the present duplicate administration of Reserve officers who are considered by active duty and by non-active duty selection boards. For the Reserve component, provision is made for Reserve officers who have been ordered to active duty during mobilization or other emergency situations to continue to be considered only by Reserve selection boards if the member becomes eligible for promotion during the mobilization period. This arrangement provides real equity for the mobilized Reserve officer and is much more equitable than the alternative of placing him temporarily on the active-duty list where he would be at a distinct disadvantage in competing with career active duty officers for promotion.

Experience indicates that most officer management problems have occurred as a result of integrating a large number of mobilized members of the Reserve components into the active duty officer management system and then releasing them from active duty after a relatively short period of time. The existing Reserve system is sufficiently compatible with the system proposed in the legislation to permit parallel operation during war or emergency conditions, thus preserving the integrity of both systems and avoiding disruptions in either component during mobilization and demobilization. Following the enactment of the proposed legislation, the Department intends to submit companion legislation to modernize the Reserve officer personnel statutes to complete technical alignment of the personnel management systems of the two components.

An all Regular career force

The proposed legislation provides for an all Regular career force by the end of 11 years of commissioned service or after two promotion zone considerations for selection to the grade of major or lieutenant commander, whichever is later. Officers who begin their active commissioned service as Reserve officers can look forward to a full career only by integrating into the Regular force and accepting status as a Regular officer. This will end the contradiction of Reserve officers serving in career active-duty status and will prevent the inequities and uncertainties which the current system imposes on those officers during force reductions. Congress has continually expressed much concern over this issue. By establishing an all Regular force, a visible career gate will exist that will motivate officers to commit themselves early to an active-duty career while at the same time requiring service managers to develop and evaluate the potential of junior officers and make commitments to those individuals needed by the service in the career force. Under normal conditions, it is anticipated that the augmentation of Reserve officers to Regular status will be essentially completed by the end of the seventh year of commissioned service. Further, greater individual equity will be achieved if all officers not selected for the career active duty force (except those Reserves involved in organizing, training and administering the Reserve components) are released from active duty with adequate compensation.

Single promotion system

The adoption of a single promotion system by each service is proposed to replace the dual temporary/permanent systems presently in effect. Present law provides for a two-step promotion system—temporary promotions are administered within the ceilings of the Officer Grade Limitation Act of 1954, while permanent promotions are made under the permanent regular limits prescribed by the Officer Personnel Act of 1947. In the Army and Air Force, the law and policy provide for two separate selections, one for temporary ("insignia-change") promotion and a second for permanent ("regular") promotion which governs length-of-service expectation. In the Navy and Marine Corps, law and policy provide for a single selection for advancement to both temporary grade and permanent grade with promotion taking place as vacancies occur under the respective statutory limitations. Under this system, the single selection and temporary promotion govern length-of-service expectation. The existing systems are archaic and administratively cumbersome for promotion to grades below brigadier general or rear admiral. For example, there is no need for Army and Air Force officers to undergo two separate selections for promotion to a given grade. This proposal provides for only one promotion system for each service, with promotion on a permanent basis as vacancies occur under a single set of statutory grade limitations.

A discussion of the assumptions and considerations involved in establishing promotion timing and promotion opportunity parameters is contained in the Officer Grade Limitation Report. In general, the proposed grade authorizations have been developed to provide for normal operation of the promotion systems within promotion timing guidelines and with minimum promotion opportunities as follows:

Grade	Time of promotion (years of commissioned service)	Promotion opportunity
To first lieutenant/lieutenant (jg.)	2	Fully qualified.
To captain/lieutenant	4	95 percent.
To major/lieutenant commander	10 ± 1 yr	80 percent.
To lieutenant colonel/commander	16 ± 1 yr	70 percent.
To colonel/captain	22 ± 1 yr	50 percent.

The combined impact of the foregoing promotion phase points and promotion opportunities is shown below for 100 career officers:

Commissioned service in years	Grade Achieved	Numbers
0	2d lieutenant/Ensign	100
2	1st lieutenant/lieutenant (jg.)	96
4	Captain/lieutenant	87
10	Major/lieutenant commander	65
16	Lieutenant colonel/commander	41
22	Colonel/captain	18

The progressively decreasing number of officers shown above is attributed to a combination of normal attrition due to death and disability and the forced attrition due to failure of selection with the latter playing the major role. This does not mean that 18 out of every 100 officers entering service will be promoted eventually to colonel because voluntary separations and retirements that would occur have not been considered.

Promotion timing and promotion opportunity assumed for designing the grade tables have been limited by the practical consideration of both the historical results of the annual authorization/appropriation process and the existing OGLA levels. Incorporation of better promotion opportunity in designing the tables would have been desirable; however, the constraints were such that the Department could not assure higher opportunities than these minimums in the future.

Uniform career service expectation

Existing law provides for the mandatory separation or retirement of regular officers after specified periods of commissioned service depending upon the grade attained. These periods of service for Army and Air Force officers are different from those of Navy and Marine Corps officers. For example, a Navy lieutenant commander or Marine Corps major who has twice failed selection for promotion to commander or lieutenant colonel respectively is involuntarily retired after 20 years of commissioned service; an Army or Air Force major who has likewise twice failed selection for promotion to the permanent grade of lieutenant colonel is not involuntarily retired until he completes 21 years of commissioned service. A Navy commander or Marine Corps lieutenant colonel who has twice failed selection for promotion to captain or colonel respectively is involuntarily retired after 26 years of commissioned service; an Army or Air Force lieutenant colonel who has likewise failed selection for promotion to the permanent grade of colonel is not involuntarily retired until he completes 28 years of commissioned service. These differences are unwarranted.

The proposed legislation will provide for clearly defined and uniform career service expectation across the services. Officers in the grades of major or lieutenant commander and below who twice fail of selection to the next higher grade will be subject to involuntary separation or retirement (if eligible). However, when the needs of the service require, the Service Secretaries may convene selection boards to recommend officers in the grade of major or lieutenant commander for continuation on active duty. Officers continued, but not subsequently selected for promotion, would be retired when they become eligible. Lieutenant colonels and commanders who twice fail of selection to the next higher grade will be involuntarily retired after the completion of 26 years of commissioned service. Colonels and captains (Navy) would be involuntarily retired after the completion of 30 years of commissioned service if they have not been selected for promotion to general/flag grade.

Selective-continuation

Authority is provided to convene continuation boards for officers in the grade of O–6 with four or more years in grade and for officers in the grade of O–5 who have twice failed of selection for promotion. The legislation requires that such continuation boards, if convened, must retain at least 70 percent of the officers considered. Once continued, an officer would not be vulnerable to another board action for five years. Those not continued would be retired not later than the first day of the seventh calendar month after the report of the continuation board has been approved by the Service Secretary. The legislation additionally provides that during the transition period to the new system those officers in or selected to grades O–5 and O–6 at the time of legislative enactment would be eligible for a lump-sum transition payment of $4,000 if they were non-continued. The transition payment is to recognize the adjustment required by the shortening of their career expectation. Officers selected to the grades of O–5 and O–6 after enactment would accept the promotion with the awareness that they might face a continuation review. Accordingly, no transition payment to these officers would be authorized.

These selective continuation procedures are intended to be used sparingly and are primarily a means of reducing the numbers in grade when necessary, such as a reduction in force.

Equalization of treatment for female officers

With the essential objective of providing equal opportunity for women, the proposed legislation repeals many long-standing provisions of law which contain unwarranted distinctions with regard to female officers. As a result, the basic provisions of this bill relating to appointment, promotion, accountability, and retirement will apply equally to both male and female officers.

Special provisions of law relating to female personnel which are not changed by the legislation are those which exclude women from aircraft engaged in combat missions or on ships other than hospital ships and transports (sections 6015 and 8549, title 10, United States Code). These provisions are not directly related to the officer promotion management system. Any change in the statutory restrictions on women serving in combat is an important and fundamental question which should be considered as a separate matter.

Uniform constructive service credit

Constructive service credit awarded to officers being appointed in a professional specialty is a way of recognizing time invested in additional preparation beyond the bachelor degree and serves to place an officer in precedence with other officers who are his approximate age and who received their baccalaureate education contemporaneously. Present law and current administrative practices for awarding constructive service credit are inequitable and inconsistent across the services. The proposed legislation provides equity and uniformity in the application of constructive service credit and eliminates its use where not appropriate.

Constructive service credit is provided for on a year-for-year basis for each year of education normally required beyond the baccalaureate level—in other words, beyond four years. For example, under the proposed criteria constructive service credit would be four years for medicine and dentistry and three years for veterinary medicine and optometry.

As proposed, constructive service credit would be used for determining the entry grade, the position on the active-duty list, seniority in grade and time in grade for promotion eligibility, and selective continuation.

At the present time medical and dental officers may use constructive credit to compute longevity for determining the level of basic pay and allowances. The proposed legislation eliminates this practice in the future. In addition, physicians and dentists may use constructive service credit in their retired pay multiplier. The proposed legislation also eliminates this practice in the future.

Establishment of commodore grade in the Navy

Under present law applicable to the Navy there is only one grade for promotion purposes, rear admiral, where the other services have two grades, brigadier general (O–7) and major general (O–8). Navy rear admirals all wear the two-star insignia of an O–8. Title 37, United States Code, divides rear admiral into two grades, rear admiral (lower half) and rear admiral (upper half) for pay purposes. Rear admiral (lower half) is paid as an O–7 and rear admiral (upper half) as an O–8. Paygrade advancement is automatic from the lower half to the upper half when the officer enters the upper 50 percent of the rear admiral population. The proposed legislation incorporates provisions added in H.R. 5503, creating a one-star grade in the Navy which parallels that grade in the other services. The new O–7 grade will have the title of commodore. Also provided for in the legislation is a requirement for officers to be selected to the two-star grade of rear admiral by a selection board process. Not more than 50 percent of flag officers would be allowed in grades of rear admiral and above. These provisions are similar to those currently in effect for the other services.

Transition period

Enactment of the proposed legislation would require marked changes in administrative procedure which, if abruptly made, could adversely affect the status of many officers. Temporary provisions are included to provide for the orderly and equitable transition to the new system in all four services.

Correction of Air Force grade table inconsistency

Finally, it should be noted that the existing Officer Grade Limitation Act specifies lower limitations in the grades of lieutenant colonel and colonel for the Air Force than for the similar grades in the Army and Navy. These lower limitations reflect the fact that the Air Force, when OGLA was enacted in 1954, had a relatively young officer force in terms of years of active duty. Congress recognized that, as the Air Force matured, the tables would have to be adjusted and has subsequently granted temporary relief nine times since 1959. These relief measures have allowed Air Force officers to achieve comparable promotion flow with their contemporaries in the other services. The new grade limitations in this proposal will correct the existing inconsistencies: however, the current temporary increase expires on September 30, 1979, at which time the original Officer Grade Limitation Act takes effect. A return to permanent grade limitations would produce severe debilitating effects on Air Force career officers. The attraction and retention of younger officers to that service would be inhibited for many years. Recognizing this situation, separate action to further extend the current Air Force temporary grade limitation authority will be necessary if the new grade limitations proposed are not enacted by September 30, 1979.

COST AND BUDGET DATA

(IN CONSTANT FISCAL YEAR 1979 DOLLARS)

DOPMA was not designed to reduce costs but to provide the services a more equitable, effective, and efficient system to fill officer force structure requirements and to manage the officer corps. Nonetheless, a steady-state cost analysis of DOPMA against the current management system indicates potential long-term annual savings of about $62 million can be attained. The savings would accrue because of lower retirement and grade structure costs.

The Department also expects to incur savings of $48.6 million during transition over the first five years following implementation of DOPMA due to reduced grade structure and involuntary separation costs. The cost estimates are detailed by year in the following table.

Estimated 5-Year Costs

	Millions [1]
1st year	+$0.9
2d year	−28.2
3d year	−24.5
4th year	−3.7
5th year	+6.9
5-year costs	−48.6

[1] All costs have been calculated in constant fiscal year 1979 dollars. Costs to be incurred in fiscal year 1979 will depend largely upon the date on which this legislation becomes effective.

Sincerely,

DEANNE C. SIEMER.

The text of the Administration's draft legislation for the Defense Officer Personnel Management Act in the 96th Congress is set forth in full in the report of the Senate Armed Services Committee accompanying S. 1918 (S. Rept. 96–375, pages 84–172).

SECTION-BY-SECTION ANALYSIS

TITLE I—AMENDMENTS TO SUBTITLE A OF TITLE 10 UNITED STATES CODE—GENERAL MILITARY LAW

DEFINITIONS

Addition of new definitions (sections 101 and 645)

Section 101 of the Act would amend *section 101* of title 10, United States Code, by adding five paragraphs containing new definitions as follows:

Paragraph (37) would define a new term, "active duty list" which would be a single list containing the names of all commissioned active-duty officers of the military service concerned other than those excluded under a proposed new section 641. Excluded officers are, for the most part, reserve officers on active duty for short periods of time or for special purposes, other reserve officers who are in a full-time active duty national guard or reserve status for the purpose of performing various functions which relate to the management or training of the reserve components and certain officers of the military academies. Warrant officers and retired officers on active duty would also be excluded. The excluded officers would be considered for promotion under other rules than those generally applying to active duty officers or would, like retired officers on active duty, generally not be eligible for promotion.

Paragraph (38) would define "medical officer" as an officer who is designated as such by appropriate authority.

Paragraph (39) would define "dental officer" as an officer who is designated as such by appropriate authority.

Paragraph (40) would define "general officer" as a commissioned officer of the Army, Air Force, or Marine Corps who is appointed to and serves in the grade of general, lieutenant general, major general, or brigadier general.

Paragraph (41) would define "flag officer" as a commissioned officer of the Navy who is appointed to and serves in the grade of admiral, vice admiral, rear admiral, or commodore admiral.

Section 645 is a new section added to title 10, United States Code, which would establish the following five new definitions solely applicable to a proposed new chapter 36.

Paragraph (1) of section 645 would define "due-course officer" as an active-duty commissioned officer who experiences a normal career pattern. Such an officer (serving in grade O–6 or below) is one who has neither failed of selection for promotion while in a promotion zone nor been promoted from below the promotion zone; he is also an officer who has served on active duty continuously from the date of his commissioning, has not received constructive service credit, other than for active commissioned service, and in the case of Navy and Marine Corps officers, has not lost numbers or precedence.

Paragraph (2), (3) and (4) of section 645 would define concepts embodied in the terms "promotion zone", "officers above the promotion zone", and "officers below the promotion zone". To understand those terms, it is helpful to visualize an active-duty list of a military service containing the names of all active-duty officers of that service (except those excluded under proposed new section 641). The officers would be listed in order of seniority so that the first name on the list would be that of the officer serving in the highest grade with the earliest date of rank within that grade. The last name on the list would be the officer holding the lowest grade (O–1) with the latest date of rank of all the officers holding that grade. If 100 promotions to grade O–6 were contemplated, the Secretary of the military department would designate a "promotion zone", i.e. a segment of the active-duty list beginning with the name of the senior O–5 who had not been previously considered for promotion to grade O–6 while in a promotion zone, and, for example, the names of the next 199 O–5's listed on the active-duty list immediately following that senior O–5. This segment of the active-duty list would be designated as the "promotion zone".

All officers on the active-duty list serving in grade O–5 senior to the senior O–5 in the "promotion zone" and not on a list of officers recommended for promotion would be "officers above the promotion zone"; and all officers on the active-duty list serving in grade O–5 who meet promotion eligibility criteria but are junior to the junior officer in the "promotion zone" would be "officers below the promotion zone". The Secretary of the military department concerned would have the authority to establish the lower limit of the category "officers below the promotion zone" by setting promotion eligibility criteria for each selection board convened under the proposed section 611(a).

A selection board would consider the officers in all three zones for promotion to O–6 and select the number (in this example, up to 100) to be promoted as directed by the Secretary.

EXCLUSION OF CERTAIN PERSONNEL FROM ANNUAL END STRENGTHS; ANNUAL REPORT ON ESTIMATED OFFICER PERSONNEL REQUIREMENTS FOR NEXT FIVE YEARS

Excusion from annual end strength (section 102)

Subsection 102(a) of the Act would amend paragraph (1) of *section 138(c)* of title 10, United States Code, as follows:

Clause (1) would insert "(A)" after "(1)".

Clause (2) would add a new subparagraph (B) after the end of subparagraph 138(c)(1)(A) which specifies the categories of reserve officers who are to be excluded in determining accountable active-duty strengths for the end of each fiscal year pursuant to subparagraph 138(c)(1)(A).

Subsection 102(b) of the Act would amend section 138(c)(3)(D) of title 10, United States Code, to require the Secretary of Defense to include in the report referenced in section 138(C)(3)(A) the following additional information:

Clause (i) would require the submission of the number of warrant or commissioned officers that are required to be serving on active duty in each officer or warrant officer grade during the current fiscal year to include an estimate of such positions for each of the following five fiscal years:

Clause (ii) would require the submission of the estimated number of commissioned officers that will be on active duty in each grade on the last day of the current fiscal year and the estimated number of these officers that will be needed over the following five fiscal years as of the last day of each year.

Clause (iii) would require an estimate and analysis for the current fiscal year and each of the following five fiscal years of the accessions and losses of members on active duty in each commissioned officer grade to include a tabulation of anticipated requirements displayed by year of active commissioned service and active military service; commissioned officer discharges; other separations; deaths, promotions to all active duty commissioned grades; and Reserve and Regular officers ordered to active duty.

Clause (iv) would require an analysis of the distribution of Reserve and Regular commissioned officers serving on active duty on the last day of the preceding fiscal year by grade in which serving and years of active commissioned service.

DISTRIBUTION IN GRADE

Addition of new chapter 32—officer strength and distribution in grade (section 103)

Section 103 of the Act would amend Part II of subtitle A of title 10, United States Code, by inserting a proposed new chapter 32 entitled "Officer Strength and Distribution in Grade" consisting of sections 521, 522, 523, 524, 525 and 526.

Section 521 would provide for the establishment of active duty commissioned officer strength as follows:

Subsection (a) of section 521 would require the Secretary of Defense to determine at least once each fiscal year, or whenever necessary, the total authorized active duty fiscal year end strength for commissioned officers (excluding all warrant officer grades) in each military service.

Subsection (b) would permit the Secretary of each military department, under regulations prescribed by the Secretary of Defense, to establish the strength of any category of officer, such as for warrant officers or medical officers that may serve on active duty within the military service under his jurisdiction.

Section 522 would establish the separate permanent ceilings for the number of Regular officers in the Army, Navy, Air Force and Marine Corps. These strengths are intended to be sufficient to accommodate an all Regular career force in each military service. The accommodation of an all Regular career force within each service would be achieved through policies prescribed by the service Secretary concerned.

Section 523 would establish the ceilings on the number of commissioned officers who may serve on active duty in the grades of major (O–4), lieutenant colonel (O–5), and colonel (O–6) in the Army, Air Force, or Marine Corps, or lieutenant commander (O–4), commander (O–5), and captain (O–6), in the Navy, at the end of any fiscal year.

It would also establish the methodology for computing such ceilings.

Clause (1) of subsection (a) of section 523 contains a table that would specify the numbers of commissioned officers in the Army, Air Force, or Marine Corps who may be serving on active duty in the grades or major, lieutenant colonel, and colonel at the end of any fiscal year based upon the total number of commissioned officers on active duty in each of those services, respectively.

Clause (2) of subsection (a) of section 523 contains a table that would specify the number of commissioned officers in the Navy who may be serving on active duty in the grades of lieutenant commander, commander and captain at the end of any fiscal year based upon the total number of commissioned officers on active duty in the Navy.

Clause (3) of subsection (a) of section 523 would prescribe that when the total commissioned officer strength of a military service (less excludable officers) falls between the entry strengths in the tables depicted in clauses (1) and (2) of subsection (a) the number of officers permitted in any grade will be determined by mathematical interpolation. If the accountable commissioned officer entry strength exceeds or is less than the entry strengths listed in the aforementioned table, then the corresponding entry strengths and ceilings for the grades shown will be established in the same proportion as the nearest limit shown in the appropriate table.

Subsection 523(b) specifies the categories of officers that would be excluded in computing grade strengths in the tables depicted in clauses (1) and (2) of subsection (a) of section 523. Officers in these categories would neither be counted in computing entry strengths nor count against specific grade strength limits.

Subsection 523(c) would provide that an officer will not be reduced in grade or lose pay and allowances as a result of a reduction in the numbers of officers authorized for his grade. This subsection authorizes a temporary overage, if necessary, against authorized grade ceilings. This is intended to avoid the demotion of an officer who is serving in a controlled grade when the total number of commissioned officers in any military service is reduced. However, it is intended that additional promotions or reappointments would not be effected to the grade in question until officer strengths are reduced to or below the statutory limit.

Subsection 523(d) would provide an authority to use, in a lower grade, authorized grades not used in the higher grade. For example, if 100 of the authorized numbers in the grade of colonel were not used, this number or a combination of this number may be used in the grades of lieutenant colonel or major. Use of the 100 will be additional to the ceilings prescribed for either or both lower grades.

Section 524 would prescribe ceilings on the number of Reserve officers of the Army, Navy, Air Force, and Marine Corps who may be on active duty in grades O–4 through O–6 at the end of any fiscal year in connection with organizing, administering, recruiting, instructing or training reserve components. An authority to "carry down" authorized but unfilled vacancies to the lower grades would be permitted and would be used in the same manner as the authority provided in subsection 523(d). The intention of this provision is to set a reasonable limit on the number of such Reserve officers on active duty in grades O–4, O–5, and O–6. Since these officers are not included in the general limits on active-duty officers that may serve in these grades specified in the proposed section 523, it is proper that a separate limit be set. It is recognized, however, that the limit established is an absolute limit, unlike the "sliding scale" of limits based on total commissioned officer strengths established in the proposed section 523. Thus, it may be necessary to amend these limits up or down in the future based upon significant changes in requirements for officers needed to fulfill these function.

Section 525 would prescribe that, of the general or flag officers on active duty in the Army, Navy, Air Force or Marine Corps, not more than 50 percent may be serving in grades above grade O-7; not more than 15 percent may be serving in combined grades O-9 and O-10; and that not more than 25 percent of that 15 percent serving in grades O-9 and O-10 may be serving in grade O-10. The numbers thus authorized may not be exceeded at any time. This section would not set new limits but would simply continue the provisions of current law. It is not intended that an officer be reduced in grade or have his pay and allowances reduced because of a reduction in the number of flag and general officers serving on active duty that forms the basis for determining the strengths in each grade.

Section 526 would provide authority for the President to suspend any provision of sections 523, 524, and 525 in time of war or National Emergency as declared by the President or the Congress after the effective date of the Defense Officer Personnel Management Act. Such a suspension would end on the last day of the two-year period beginning on the date on which the suspension takes effect (unless extended by the President for an additional or any subsequent two year period) or on the last day of the one year period beginning on the date of the termination of the war or National Emergency whichever occurs first. These provisions would supersede the appropriate provisions of title II of the National Emergencies Act (50 U.S.C. 1621–1622).

ORIGINAL APPOINTMENTS IN REGULAR COMMISSIONED OFFICER GRADES

Appointments in Regular components (section 104)

Section 104 of the bill would amend Part II of subtitle A of title 10, United States Code, by inserting in chapter 33 new sections 531, 532, and 533 as follows:

Section 531 would provide general authority for the President to make an original appointment in grades O-1 through O-6 in the Regular Army, Regular Navy, Regular Air Force or Regular Marine Corps subject to the advice and consent of the Senate. While officers are given appointments to serve in the Regular components of a particular service under this general authority, they may be designated by the service Secretary concerned for service in a particular competitive category established under the provisions of section 621 of title 10, as added by this Act.

Section 532 would prescribe the general qualifications required of all persons who may be appointed to commissioned grades in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, except the appointments of limited duty officers in the Regular Navy or Marine Corps. The appointments of these limited duty officers is regulated by section 5589 or 5596 of title 10. This section would require that the Secretary of Defense prescribe regulations governing the manner of tendering and effecting such appointments.

In the case of appointing medical and dental officers, appointments would only be made from qualified doctors of medicine, osteopathy, or dentistry and would be limited to grades O–2 through O–6. The qualifications of the doctors of osteopathy to be appointed as medical officers are specifically delineated in this section whereas the qualifications for doctors of medicine, or dentistry are not. However, this section would permit the Secretary of the military department concerned, after considering the advice of the Surgeon General, to establish by regulation any other appropriate qualifications for the appointment of medical or dental officers.

A person receiving an original appointment as a medical officer, dental officer or chaplain is not subject to the age restriction in clause (2) of subsection (a). This restriction would not permit the appointment of an individual who could not complete 20 years of service prior to his fifty-fifth birthday.

Section 533 would govern actual and constructive service credit that may be awarded to a person depending on circumstance or qualification, who is originally appointed in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps. Service credit is awarded in the following circumstances:

Clause (1) of subsection (a) of section 533 would permit a person who is being tendered an original appointment as a Regular commissioned officer (does not include any warrant officer or commissioned warrant officer grade) to be credited with any active commissioned service (other than any service as a warrant officer or commissioned warrant officer) that was performed before the appointment. This credit would be used for determining the appointee's grade as a Regular officer and relative position on the active duty list under section 620 of title 10 as added by this Act.

Clause (2) of subsection (a) of section 533 would require the Secretary of Defense to prescribe uniform regulations among the military services that would allow the Secretary of the military department concerned to limit prior active commissioned service credit in those cases where a person is receiving an original appointment as a Regular officer under the provision of clause (1) of subsection (a) of this section or to deny such prior active commissioned service in those cases where a person is receiving an appointment under subsection (b) of this section.

Clause (1) of subsection (b) of section 533 would provide an authority for the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense to credit certain individuals who are receiving an original appointment in a commissioned grade (other than a commissioned warrant or warrant officer grade) in the Regular component of any military service with constructive service for special experience, advanced education or training, as follows:

Clause (1)(A) of subsection (b) of section 533 would provide authority to grant constructive credit for education by permitting credit of one year for each year of education beyond the baccalaureate degree level for the appointment of persons in categories which necessitate such advanced education, or require an advanced degree for an appointment as commissioned officer. Other than provided for in clause (E) of this subsection, the credit awarded will not exceed the number of years normally required to complete the advanced education or receive the advanced degree.

Clause (1)(B) of subsection (b) of section 533 would provide additional credit for various health professionals (other than medical or dental officers) for advanced education beyond the basic baccalaureate degree level where such advanced education would be directly used by the military service concerned. In the case of health professionals the advanced degree need not be a prerequisite to appointmnt. For example, an individual with a Doctor of Pharmacology degree or a master of science or Doctor of Philosophy degree in microbiology could be granted constructive credit for such education if the individual was being appointed in a health profession and such education would be directly used by the service concerned.

Clause (1)(C) of subsection (b) of section 533 would provide additional credit, over that otherwise permitted, for medical and dental officers. It would give a maximum of one year of credit for internship or equivalent graduate level medical, dental, or other professional training which is required by the military services; and secondly, it would credit, on a one for one basis, each additional year of such graduate-level training or experience that is creditable toward a specialty certification required by the military service concerned. The crediting of experience in the latter provision of this clause is intended to recognize the practical experience that a physician or dentist may attain while working towards specialty certification; however, is not intended as credit for experience gained in private practice or similar employment. This type of experience would be creditable under clause (1)(F).

Clause (1)(D) of subsection (b) of section 533 would permit additional credit over that provided by any other clause in this subsection, except in those cases where the same credit was given for experience in clause (1)(C) of this subsection. The additional credit in clause (1)(D) would only apply to certain individuals who have an experience level, needed by the military service concerned, that uniquely distinguishes them from the normal qualifications required for appointment as a commissioned officer.

Clause (1)(E) of subsection (b) of section 533 would provide for, in certain circumstances, the crediting to various health professionals of additional service credit, over that provided in clause (1)(A) of this subsection, of one year that would recognize actual educational requirements in excess of the minimum stated requirement for the profession concerned. This additional credit would be provided if the number of years of baccalaureate level education completed by 75 percent or more of the entering students (entering class) exceeds by one or more years the stated minimum level of preparatory education required by a majority of the schools that award degrees in that health discipline. This formula is sufficiently flexible to allow adjustment of credit given over time in view of changing requirements in various health disciplines.

Clause (1)(F) of subsection (b) of section 533 would permit physicians and dentists, if appointed or designated as medical or dental officers to receive additional credit for experience. Unlike the credit specified in clause (C), which is for experience creditable for specialty certification, the credit permitted in this clause is for private practice as a physician or dentist, or other such employment where medical or dental qualifications are required as a basic qualification for the position in which the individual is employed.

Clause (2) of subsection (b) of section 533 restricts the amount of constructive service credit that may be awarded so that original appointment will not exceed the grade of O-4 except in cases waived by the Secretary of the service concerned under regulations prescribed by the Secretary of Defense. This waiver authority is intended to give the military departments sufficient flexibility to recruit and appoint officers in shortage skills or in areas where special qualifications are needed in grades commensurate with the constructive service credit awarded in subsection (b). Absent such shortages, appointments would be limited to a maximum of grade O-4 even if the constructive service that could be awarded might indicate a higher grade.

Clause (3) would stipulate that service credit awarded an officer under this subsection is in addition to any service credited that officer under subsection (a) and shall be credited at the time of original appointment of the officer.

Subsection 533(c) would delineate the purposes for which constructive credit could be used.

Subsection 533(d) would provide limitations on the crediting of constructive service.

Subsection 533(e) would permit the Secretary of the service concerned to award additional service credit to officers who are being appointed or designated as judge advocates if the Secretary of Defense has determined that there are critical shortages in the qualified numbers of judge advocates below the grade of O-4 in the military service concerned. The additional credit awarded, in addition to any other credit awarded, shall not result in the appointment (or constructive service awarded) that would result in appointments in excess of the minimum requirement needed for appointment in the grade of O-3 in that service.

Subsection (f) would provide that a Reserve officer will not lose seniority on the active-duty list when appointed as a Regular officer if the service performed was as a commissioned officer (other than a warrant officer or a commissioned warrant officer) on active duty.

TEMPORARY APPOINTMENTS IN OFFICER GRADES

Section 105 of the bill would amend title 10, United States Code, by inserting after Chapter 34, a new chapter 35 with new sections 601, 602, and 603 as follows:

Positions of importance and responsibility

Section 601 would authorize the President to designate positions of importance and responsibility and to assign to them officers above the grade of colonel or captain (Navy). An officer so assigned would hold the grade of general or admiral, or lieutenant general or vice admiral if appointed to such grade and confirmed by the Senate. To hold the grade carried by one of these positions, an incumbent must be appointed to the grade, by and with the consent of the Senate, each time he receives an assignment to such position. This section provides further that:

(1) If the assignment of an officer to a position of importance and responsibility is terminated for the purpose of reassignment to another such position, the officer continues to hold the grade in which he was serving until he assumes the new position.

(2) If such an assignment is terminated for the purpose of hospitalizing an officer, the officer continues to hold the grade in which he had been serving during the period of hospitalization but not to exceed six months.

(3) If such an assignment is terminated for the purpose of retiring an officer, the officer continues to hold the grade in which he had been serving until he is retired but not to exceed 90 days.

(4) Appointment to a grade under this section does not affect the permanent grade held by the officer or his placement on the active-duty list.

Temporary promotions of warrant officers

Section 602 would authorize the Secretary of a military department to promote a warrant officer to a higher temporary warrant officer grade under such regulations as he may prescribe.

Temporary promotions during war and national emergency

Section 603 would provide for temporary appointments in time of war or national emergency as declared by the Congress or the President after the effective date of this Act.

Subsection 603(a) would limit such appointments to commissioned officer grades below O–9. However, appointments may also be extended to members on active duty.

Subsection 603(b) would make appointments under this section temporary and permit the President to vacate such appointments at any time.

Subsection 603(c) would provide that a person receiving an original appointment under section 603 may be authorized constructive credit under section 533 of title 10, as added by this Act, and that such appointment becomes effective when that person is ordered to active duty under this section.

Subsection 603(d) would provide that the permanent appointment and other applicable status held by the officer before the temporary appointment remains in effect and that a member shall incur no reduction in pay and allowances previously entitled due to his previous permanent status.

Subsection 603(e) would provide for the presumption that an officer who is promoted to a temporary grade accepts that appointment unless he expressly declines it, that he becomes entitled to the pay and allowances of the higher grade on the effective date of the appointment, and that an officer need not take a new oath if his service since last taking it is continuous.

Subsection 603(f) would provide for the termination of temporary appointments either on the second anniversary of the appointment or at the end of the six month period beginning on the last day of the war or national emergency or on the date the person appointed is released from active duty, whichever is earlier. Such appointments, however, may be reestablished if the national emergency or war is not terminated within the two year limitation of clause (1) of subsection 603(f).

Promotion, separation, and involuntary retirement of officers on the active-duty list

Section 105 of the bill would further amend title 10, United States Code, by inserting after new chapter 35, another new chapter 36 with new section 611 through 645 inclusive as follows:

Selection boards

Section 611 would provide for the convening of boards to select officers for promotion, continuation on active duty, and selective early retirement.

Subsection 611(a) would provide the Secretary of the military department concerned (under regulations prescribed by the Secretary of Defense) authority to convene selection boards to consider officers on the active-duty list for promotion to the next higher grade, grades O–2 through O–8, whenever necessary. The Secretary concerned may convene separate boards for each competitive category established under section 621 of title 10 as added by this Act. This subsection permits the Secretary to decentralize the selection process and convene more than one board to any grade for any competitive category. The intent is to provide the military services discretionary authority to allow field commands to convene selection boards under section 611(a) to recommend officers to the grade of O–3. Such decentralization of promotion selection is not intended to apply to promotion selection boards to grades above O–3.

Subsection (b) of this section would provide the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, to convene, whenever necessary selective continuation boards under section 637 of title 10 as added by this Act or selective early retirement boards under section 638 of title 10 as added by this Act. There is no prohibition against reconvening promotion selection boards as continuation or early retirement boards.

Section 612 would regulate the composition of any boards convened under section 611 of this chapter as follows:

Subsection (a)(1) would require that board member be appointed in accordance with direction approved by the Secretary of the military department concerned in compliance with the rules specified in this section. A board would consist of five or more active duty list officers of the same armed force as the eligible officers being considered by the board concerned. The members must be serving at least in grades O–4 or higher and must be serving in a higher grade than the grade of the eligibles being considered.

Subsection (a)(2) would require that at least one officer from each competitive category would participate as a member of the board if officers from that competitive category are being considered. To illustrate, this requirement would insure that at least one chaplain would participate in the selection process (of chaplains) if chaplains are eligible for consideration by the board.

Subsection (a)(3) would require that, whenever reserve officers are to be considered by a selection board, the membership of that board shall include at least one reserve officer of that military service who would participate in the activities of the board. However, when a board is considering officers for promotion to the grades of O–7 or O–8, a reserve officer member need not be included if there are no reserve officers of that military service on active duty in the next higher grade who are eligible to serve on that board.

Subsection (a)(4) would permit the Secretary of the military department concerned to complete the membership of a board with qualified retired officers of the same military service if qualified officers on the active-duty list are not available. Retired general or flag officers brought on active duty for this purpose would not be accountable under any active duty general and flag officer limitation.

Subsection 612(b) would restrict officers from serving on successive boards for the same competitive category and grade. The intention is to give officers not selected by a promotion board a fresh consideration by different board members. It is recognized, however, that in some cases an officer not selected by a promotion board may be considered for the second time by a board other than the next successive board for the same competitive category and grade. This could happen after removal from a promotion list, as the result of Secretarial correction board action, or as the result of other similar combination of events. It is not intended that the provisions of subsection (b) would bar an officer who may have served on the first board from serving on a later board in such cases as long as the officer does not serve on two successive boards.

Section 613 would prescribe the oath that selection board members must take prior to commencing the deliberations of the selection board. It is intended that each member perform the task in the best interests of the military service concerned, considering the special fitness of the officer being considered.

Section 614 relates to notice to be provided officers who are eligible for consideration by a promotion selection board and communications between such officers and the selection board as follows:

Subsection 614(a) would require that a military department take action at least 30 days prior to convening a selection board to notify officers eligible for consideration. The notice may be given by transmission of individual notification to eligible officers or by general written notice to the military service. Since officers may become eligible or ineligible for promotion consideration after the date of such notice, the bill would only require that the notice be accurate when it is made.

Subsection 614(b) would entitle an eligible officer to send a written communication to a promotion selection board calling attention to any matter that he considers important. Such communications are subject to regulations to be prescribed by the Secretary of the military department concerned that are intended to provide reasonable control over the volume, format, and relevance of the communications. An officer's access to records in developing such communications is intended to be subject to the provisions of section 552a, Title 5, United States Code.

Section 615 would relate to information furnished to selection boards convened under section 611(a) of this title as follows:

Cause (1) would require that data be furnished relative to the maximum number of officers that the board may select for promotion in each competitive category.

Clause (2) would require that the names of all eligible officers in each competitive category be furnished in some manner.

Clause (3) would require that pertinent records (as determined by the Service Secretary) of each eligible officer to be considered by the board be furnished the board.

Clause (4) would require that the board receive appropriate information that would relate to the skill needs of the military service concerned.

Clause (5) would require that the board be furnished any other information or guidelines necessary to accomplish its functions.

Section 616 would require selection boards to recommend officers for promotion as follows:

Subsection 616(a) would require that a board only recommend those officers considered to be best qualified for promotion. The board must consider skill needs as provided for in clause (4) of section 615. It is intended that such skill needs as may be presented to the board would be considered as only one factor in the determination of the qualifications of the officers being considered.

Subsection 616(b) would prescribe the maximum number of officers who may be recommended by a board for promotion below the zone in any competitive category. The number actually recommended by the board is at the expense of the maximum number authorized under section 615.

Subsection 616(c) would require that a majority of the members of a board ascertain that all officers recommended as best qualified for promotion are also fully qualified for promotion.

Subsection 616(d) would provide that an active-duty list officer may not be promoted to a higher permanent grade, except as otherwise provided by law, unless he is considered and recommended for promotion to that grade by a selection board convened under this chapter.

Section 617 would relate to the reports of selection boards as follows:

Subsection 617(a) would require each selection board convened under 611(a) of this title to submit a written report, signed by a majority of the members, containing the names of the officers recommended for promotion. The board must certify in the report that it has carefully considered the records of each officer eligible for consideration and that, in the opinion of a majority of the voting members of the board, the officers recommended for promotion are the best qualified for promotion to meet the need of the military service concerned.

Subsection 617(b) would require a selection board convened under section 611(a) of this title to recommend to the Secretary of the military service concerned, the name of any officer whose record, in the opinion of the majority of the board, indicates the officer should be required to show cause for retention on active duty. The intent is for the Secretary to then refer the officer's name to the appropriate authority for possible action under provisions of chapter 60 of this title.

Section 618 relates to reports of selection boards as follows:

Subsection 618(a) would require the Secretary of the military department concerned to return a report of a selection board if the board had not compiled with the law or has not followed prescribed regulations. If the report is returned, the board will conduct whatever proceedings are necessary in order to effect a revision of the report to the satisfaction of the Secretary.

Subsection 618(b)(1) would require the report of a board to be submitted to the Secretary of Defense who will then forward it to the President for his approval, modification, or disapproval.

Subsection 618(b)(2) permits the Secretary concerned to submit to a board convened under section 1181 of this title, added by this act, per regulations provided under that section, an officer named in a report of a selection board who has a record that indicates that the officer should be required to "show cause" for retention on active duty.

Subsection 618(c) would permit only the President to remove an officer recommended for promotion from a report of a board. This may be done at any time prior to the actual promotion of the officer.

Subsection 618(d) would permit the recommendations for promotions from a report of a board to be disseminated upon approvel by the President. It would require the names of officers recommended for promotion to be promptly disseminated upon confirmation by the Senate if they have not been released earlier.

Subsection 618(e) would require that the record of deliberations on the proceedings of a selection board convened under 611(a) not be disclosed to any person who has not served as a member of the board in question unless otherwise authorized by this section. Special selection boards convened under section 628, however, would fall into an exempt category with regards to determining the appropriate records to be provided such a board as required under the provisions of that section.

Promotions

Section 619 would specify requirements for consideration for promotion as follows:

Subsection (a)(1) of this section would provide the minimum eligibility requirements of 18 months time in grade for permanent promotion to the grade of O–2 and two years time in grade for promotion to O–3. The intent of these rules is, under normal circumstances, to permit the promotion of junior grade officers to O–2 as early as 18 months active commissioned service and as early as 42 months active commissioned service to O–3. Constructive service or other service credited an officer is counted in computing all time-in-grade requirements in section 619.

Clause (2) of subsection (a) of section 619 would provide the minimum eligibility requirements for the permanent promotion of officers (other than officers below the promotion zone or officers who have been awarded constructive service credit other than for active commissioned service) to grades above O–3. Officers in this category are required to have a minimum of three years time in grade to be considered for promotion to grades O–4, O–5 or O–6 and one year in grade to be considered for promotion to grades O–7 or O–8.

Clause (3) of subsection (a) of section 619 would permit the Secretary of the military department to require longer periods of service to be eligible for promotion to grades O–2 and O–3 or to be considered for promotion to grades above O–3.

Clause (4) of subsection (a) would permit the Secretary of the military department to waive the service-in-grade requirements specified in section 619(a)(2) to the extent necessary to enable the military department to establish a general policy that would provide at least two considerations for promotion to the next higher grade from below the promotion zone. The intent of this provision is to insure the services are able to establish and maintain a system of accelerated promotions for exceptionally well-qualified officers. It is not intended that two considerations from below the promotion zone be guaranteed to each officer since individual circumstances might result in fewer considerations for a specific officer.

Clause (5) of subsection (a) would provide that service in a grade held as the result of a temporary appointment is counted in the computation of time in grade requirements outlined in this section.

Subsection 619(b) would authorize the continued promotion eligibility of officers who have failed of selection provided the officer concerned remains on active duty in other than a retired status and is not subsequently selected for promotion.

Subsection (c) would prescribe in clause (1) that officers above the promotion zone are eligible for promotion each time a selection board is convened under section 611(a) for their competitive category; in clause (2)(A) that the Secretary of the military concerned may develop regulations for limiting the officers to be considered from below the zone and to the grade of O–7 to those that are considered to be exceptionally well qualified for promotion; and in clause (2)(B) that the Secretary may, by regulation, devise the criteria for such selections that may occur as a result of the procedures developed in clause (2)(A). The specific intent of these promotion provisions is to provide the military services with the capability of establishing an effective system for the promotion of executive level officers to grade O–7.

Subsection (d)(1) of section 619 would require that a selection board not consider for promotion any officer whose name is on a promotion list for the grade under consideration. The intent of this provision is to preclude considering officers who have been withheld for promotion from the list in question. In these cases, the withhold action must be completed and the officer's status resolved before the officer is again eligible for promotion.

Subsection (d)(2) would provide a grade restriction of O–5 on Navy or Marine Corps limited duty officers. Officers in this category may not be considered for promotion to the grade of O–6 unless they are no longer appointed as limited duty officers.

Section 620 would require the Secretary of the military department concerned to maintain a single active-duty list of commissioned officers on active duty in his service. Officers are to be carried on the list in an order of seniority by grade. Temporary officers (temporary appointments) would, if appropriate, revert to their original permanent status on the list when their appointments are terminated. The active duty list (ADL) would be comprised of separate lists containing the names of officers designated for service in each competitive category so established under section 621. The rules for maintaining the active-duty list should be devised within each military service. Since the active-duty list will be subject to constant change, dissemination practices should be determined by the Secretary concerned. It is intended that the Secretary concerned can correct erroneous placements on the list.

Section 621 would permit the Secretary of the military department concerned, under broad policy guidelines issued by the Secretary of Defense, to establish or disestablish various competitive categories. Separate categories are needed to provide for the separate promotion consideration and career development of groups of officers whose extensive training and experience and comparatively narrow utilization makes separate career management desirable. It is intended that such categories be established only when necessary in the best interests of the service.

Section 622 would require the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, to determine the maximum number of officers a selection board may recommend for promotion in any grade or competitive category. This determination is to be based on the numbers needed to meet mission requirements in that grade by competitive category and the estimated overall vacancies during the period in which the officers are expected to be promoted.

Section 623 would relate to the establishment of the various promotion zones as follows:

Subsection (a) of section 623 would require the Secretary of the military department to establish a promotion zone for each grade and competitive category for section 611(a) selection boards to grades O–3 and above. The promotion zone eligibility criteria established need not necessarily be the same for all competitive categories and may depend on the career track established for each category of officers as well as specific grade requirements set for each category.

The process of promoting to requirements by competitive category may result in different career patterns for certain competitive categories. This may result in the typical officer in such category being promoted earlier or later to certain grades than is the case for officers in other categories. While this is recognized as desirable, promotion of due course or typical officers within the following promotion windows is regarded as generally desirable:

Years Active Commissioned Service (including constructive service)	
To grade:	
O–4	10 + or −1
O–5	16 + or −1
O–6	22 + or −1

Subsection (b) of section 623 would require the Secretary concerned to determine the number of eligibles in the promotion zone for any grade and competitive category from among officers eligible in that grade and competitive category under the following criteria:

(1) The number of officers needed in that competitive category in the next higher grade in each of the next five years.

(2) The estimated vacancies in that competitive category in the next higher grade in each of the next five years.

(3) The number permitted under section 523 of this title.

(4) The number of officers to be placed in the promotion zone in a competitive category over the next five years to provide relatively similar promotion opportunity.

Section 624 would relate to the actual promotion of officers selected by a board convened under section 611(a) of this title as follows:

Subsection 624(a) would permit the promotion of officers to the grade of O-2 or O-3 upon completion of a minimum of 18 months or 2 years service in grade, respectively, as required in section 619(a) of this title. The advancement of such officers should be based on the needs of the service, but since there are no grade tables for these grades, this requirement would not necessarily be related directly to vacancies.

Subsecton 624(b) would also require that the Secretary of the military department concerned, upon approval of a selection list by the President, to place the names of the officers approved for promotion in each competitive category on promotion lists by competitive category. The order on these lists will be the order of seniority of the selectees on the active-duty list. The officers would then be promoted in order by competitive category as the requirement for additional officers occurs within their competitive categories. The intent of this section is to allow the promotion of officers in any competitive category to be more closely aligned to requirements within the competitive category.

Subsection 624(b)(1) would provide for the appointment of regular or reserve officers who are promoted under chapter 36 of this title to their regular or reserve grade, as appropriate. The consequence of this provision will require that a reserve officer's reserve grade be changed to equal his active-duty grade. The officer's position on the active-duty list would be determined on the basis of his temporary date of rank. Such a reserve officer's promotion service date in his reserve grade would be determined under other applicable laws should such officer be released from active duty.

Subsection 624(b)(2) would provide authority to appoint an officer serving under a temporary appointment, made under section 603 of this title, to a higher grade if the officer receives a promotion under chapter 36 of this title.

Subsection 624(c) would require that all appointments under this section be made by the President and confirmed by the Senate except appointments to the grade of O-2, which would be made by the President alone.

Subsection 624(d)(1) would provide for the delay of an officer's promotion (withheld promotion) under certain circumstances such as removal under chapter 60, or general courts martial charges. If the officer is not subsequently removed from the list of officers recommended for promotion, the promotion may be consummated as was originally intended with retroactive pay and allowances.

Subsection (d)(2) would provide for the delay of the promotion of officers who are believed to be mentally, physically, morally or professionally unqualified to assume the duties of the higher grade. If the officer is later found to be qualified, the promotion may be consummated as originally intended with retroactive pay and allowances.

Subsection (d)(3) would require that written notice be provided an officer specifying the grounds for a delay before the delay may be effected. An officer whose promotion has been delayed would be authorized to provide written communications to the Secretary concerned.

Subsection (d)(4) would require that an appointment not be delayed for more than six months after the original appointment date unless the Secretary concerned specifies a further period of delay. In no case may final determination with respect to an appointment be delayed for more than 90 days after final action (as determined by the Secretary concerned) in any criminal case against an officer in a Federal or State court, or more than 90 days after final action (as determined by the Secretary concerned) in any courts-martial case or more than 18 months after the original appointment date, whichever is later.

Section 625 provides that the President may vacate the promotion of an officer who is promoted to the grade of brigadier general or commodore admiral during an 18-month period following his promotion to that grade. Under current law applying to the Army and the Air Force, an officer who is promoted to brigadier general normally receives a temporary appointment. He serves under this appointment for a substantial period before his consideration for promotion to the equivalent permanent grade. During that period, his temporary appointment could be revoked; and, if it is, he reverts to his lower permanent grade. This section establishes a similar period during which the Secretary of the military department concerned can monitor the performance of newly appointed brigadier generals or commodore admirals. Where warranted, the Secretary may recommend to the President that a promotion to brigadier general or commodore admiral be vacated.

Section 626 would relate to the acceptance of promotions and oath of office as follows:

Subsection 626(a) would specify that an officer promoted to a higher grade under section 624 of this title is considered to have accepted that promotion on the date of the appointment, unless the promotion is specifically declined in writing to the appropriate authority.

Subsection 626(b) would not require an officer who has served continuously since he took the oath of office prescribed in section 3331 of title 5, United States Code, to take a new oath upon appointment to a higher grade under section 624 of this title.

Failure of selection for promotion and retirement for years of service

Section 627 would define failure of selection. An officer would not be considered to have failed of selection unless he is in or above the promotion zone when considered but not selected for promotion. The concept of failing selection for promotion does not apply when officers are not selected for promotion to the flag and general officer grades.

Section 628 would grant the Secretary of a military department, under regulations prescribed by the Secretary of Defense, the power to establish special selection boards to consider for promotion officers not properly considered in the normal course of events by a board convened pursuant to Section 611(a).

Subsection 628(a) would authorize such boards to consider officers who should have been considered but were not considered because of administrative error. This subsection provides a means to make a reasonable determination as to whether the officer would have been selected if pertinent records had been considered by the selection board that normally would have considered him.

Subsection 628(b) would authorize such boards to consider an officer not selected by a board where it has been determined, under directives prescribed by the Secretary concerned, that the action of the board involved a substantial injustice, error of law, material error of fact, or material administrative error. The purpose of this subsection is to provide a means to make a reasonable determination as to whether the officer would have been selected if his pertinent records had been properly considered by the prior board, unfettered by material error.

Subsection 628(c) would require the board to submit a certified report to the Secretary concerned. The provisions of sections 617 and 618 of this title would apply to the report and proceedings of such boards.

Subsection 628(d) would require that the report of a special selection board containing the names of officers recommended for promotion be approved by the President and that placement of a selected officer's name on a promotion list would be accomplished in accordance with regulations prescribed by the Secretary of Defense. It would not require that the Secretary of the military department concerned forward the report of a special selection board to the Secretary of Defense or the President unless one or more officers were being recommended for promotion. It would provide that an officer promoted as the result of the recommendation of a special selection board would be treated for purposes of seniority and pay and allowances as if he had been selected by the prior selection board that should have considered him or did consider him but did not select him.

Subsection 628(e) would require that members of special selection boards take the same oath as that required of selection board members by section 613 of title 10, United States Code, as added by this Act.

Section 629 relates to removal from a promotion list. It would authorize the President to remove the name of any officer from a list of officers recommended for promotion. It is intended that such removal could be effected by the President at any time prior to the promotion of the officer. It would also provide for the removal of the name of any officer whose appointment is not confirmed by the Senate. It would provide that an officer whose name has been removed from a promotion list, and who is later promoted, shall be entitled to the same seniority and pay and allowances to which he would have been entitled had he not been removed from the list. It is intended that an officer removed from a selection list be considered again for promotion by the first selection board convened for his grade and competitive category after such removal. Should an officer who was removed from a promotion list subsequently fail to be selected for promotion, or if his name is removed from a promotion list a second time, he would be considered as having failed twice of selection.

Section 630 would authorize the Secretary of a military department, under regulations prescribed by the Secretary of Defense, to discharge a regular commissioned officer who has less than five years of active commissioned service. It is intended that prior active commissioned service as a reserve commissioned officer be counted in determining the five years.

The purpose of this section is to establish a probationary period during which the performance of the officer can be observed to determine whether he is qualified to receive regular tenure. Discharge under this authority may be for substandard performance of duty, misconduct, or moral or professional dereliction or other disqualifying characteristic, or because the regular officer serving in the grade of second lieutenant or ensign was found not qualified for promotion to the next grade.

This section would permit the discharge date to be set under procedures approved by the Secretary concerned. It would also require that an officer found not qualified for promotion must, unless promoted, be discharged not later than the end of the eighteen-month period beginning on the date that the officer is first found not qualified for promotion.

Under these rules the Secretary would have the option of discharging the officer when the officer is first found not qualified for promotion or give the officer further opportunity to qualify for promotion.

Section 631 would prescribe the consequences of failure of promotion of officers in the regular grades of first lieutenant and lieutenant (junior grade). An officer holding one of these grades who is twice considered and not selected for promotion to the next higher regular grade would be discharged, or retired if eligible. The discharge or retirement shall be on the date requested by the officer but such date shall not be later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board that considered him for the second time.

If on the date of discharge, the officer is within two years of qualifying for retirement under sections 3911, 6323 or 8911 of title 10, United States Code, the officer will be retained on active duty until qualified for retirement and then be retired, unless discharged or retired under some other provision of law. This section would not apply to limited duty officers in these grades; current section 6383 of title 10, United States Code, governs such officers. The discharge or retirement under this section shall be considered to be involuntary for the purpose of any other provision of law.

Section 632 would prescribe the consequence of failure of promotion of officers in the regular grade of captain or major, or lieutenant or lieutenant commander (in the Navy). An officer holding one of these grades who is twice considered and not selected for promotion to the next higher regular grade would be discharged or retired, if eligible. The date of discharge or retirement would be the date requested by the officer, but such date shall not be later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board that considered him for the second time.

If on the date of discharge the officer is within two years of qualifying for retirement under sections 3911, 6323 or 8911 of title 10, United States Code, the officer would be retained on active duty until qualified for retirement and then be retired, unless discharged or retired under some other provision of law. This section would not apply to limited duty officers in these grades; current section 6383 of title 10, United States Code, governs such officers. The discharge or retirement under this section would be considered to be involuntary for the purpose of any other provision of law.

Section 633 would provide that each regular lieutenant colonel or commander, except limited-duty officers, unless on a list of officers recommended for promotion to the next higher grade, would be retired on the first day of the month following the month in which the officer completes 28 years of creditable active commissioned service. This provision would prescribe 28 years which is the general rule that currently applies to the Army and Air Force. Under existing law regular lieutenant colonels in the Marine Corps and commanders in the Navy retire upon the completion of 26 years of service.

Section 634 would require the retirement of a regular colonel or Navy captain upon completion of 30 years of creditable active commissioned service unless the officer is on a list of officers recommended for promotion.

Section 635 would require the retirement of an officer holding the regular grade of brigadier general or commodore admiral upon completion of 30 years of creditable active commissioned service or on the fifth anniversary of his appointment to that grade, whichever is later, unless such officer is on a list of officers selected for promotion.

Section 636 would require the retirement of an officer holding the regular grade of major general or rear admiral after five years in that grade or after completing 35 years of creditable active commissioned service, whichever is later.

Continuation on active duty and selective early retirement

Section 637 would provide authority to continue on active duty certain officers who would otherwise be subject to mandatory discharge or retirement. The administration of this authority would be uniformly governed by regulations prescribed by the Secretary of Defense.

Subsection 637(a) would set the metes and bounds for continuation on active duty.

Paragraph (1) would provide the authority to select officers, who are subject to discharge or retirement because they were not chosen for promotion, for continued active duty. Such continued service would be subject to the needs of the service.

Paragraph (2) would authorize the continuation of a twice-failed regular officer in the grade of captain or Navy lieutenant up to 20 years of active commissioned service if the service needs officers of that grade and skill and the officer consents to remain on active duty.

Paragraph (3) would authorize the continuation of a twice-failed regular officer in the grade of major or lieutenant commander up to 24 years of active commissioned service, also subject to service needs and the officer's consent.

Paragraph (4) would provide that a regular officer selected for continuation under subsection 637(a) who declines continuation will be discharged, retired, or retained on active duty as he would have been if either not considered or not selected for continuation.

Paragraph (5) would provide that a regular officer continued under subsection 637(a) who is not subsequently selected for continuation or promotion shall be discharged or retired upon completion of the officer's term of continued service; or, if such officer is within two years of qualifying for 20 year retirement, be continued on active duty until eligible for retirement and then retired. No minimum period of continued service would be set and officers could be continued more than once. Continued officers subsequently selected for promotion would no longer be limited by the terms of their continuation.

Paragraph (6) would provide that the retirement or discharge of an officer in the grade of captain or major, or lieutenant or lieutenant commander (in the Navy) under subsection 637(a) shall be considered involuntary. This provision would not apply to an officer who is retired or separated under some other provision of law. It would provide that an offer of continuation would not render an officer ineligible for separation pay or a retirement grade based on six months service in that grade.

Subsection 637(b) would authorize the Secretary of a military department, when the needs of the service require, to continue on active duty regular officers who would otherwise be retired under sections 633, 634, 635, or 636. The continuation period is at the discretion of the Secretary concerned but may not exceed five years. A continued officer may not serve past such officer's 62nd birthday.

This section would require selection by a board convened under section 611(b) in order to continue officers except that generals, lieutenant generals, admirals, and vice admirals, may be continued by the President without board action.

Section 638 relates to selective early retirement of regular officers as follows:

Subsection 638(a) would provide for the selective early retirement of regular officers who are serving in the grade of:

(1) Lieutenant colonel or commander who have failed of selection of promotion to the grade of colonel or Navy captain two or more times and whose names are not on a recommended list for promotion;

(2) Colonel or Navy captain who have served at least four years of active duty in such grade and whose names are not on recommended list for promotion;

(3) Brigadier general or commodore admiral who have served at least three years of active duty in such grade and whose names are not on a recommended list for promotion; or

(4) Major general or rear admiral who have served at least three years of active duty in such grade.

These officers may be considered for early retirement by a selection board under the proposed new section 611 of title 10, United States Code, as added by this Act.

The Secretary concerned shall specify the number of officers described in clauses (1) and (2) that the board may recommend for early retirement, but the number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.

It is envisioned that this authority may be exercised during a period of officer strength reductions in any competitive category to reduce the number of officers serving on active duty in the grades specified in clauses (1) and (2). It is not intended to be used during periods of stable officer strength levels simply to create promotion opportunity to these grades nor is it to be used as a substitute for the disposition of officers who otherwise would be processed under the proposed new chapter 60 of title 10, United States Code, as added by this Act.

Subsection 638(b) would require that those officers approved for early retirement by the Secretary concerned, if eligible, be retired on the date requested by the officer concerned. However, such date could not be later than the first day of the seventh calendar month beginning after the month in which the Secretary approved the report of the board that recommended the officer, other than general officer or flag officer, for retirement. In the case of a general officer or flag officer, the retirement date could not be later than the first day of the tenth calendar month beginning after the month in which the Secretary approved the report of the board that recommended the officer for retirement, unless the officer elects an earlier retirement date. However, any officer below general officer or flag officer grade would, if not eligible for retirement, be retained on active duty until qualified for retirement and then be retired.

Subsection 638(c) would require that an officer, other than a general officer or flag officer, not be considered for early retirement under this section more than once in any five-year period while the officer holds the same grade.

Subsection 638(d) would provide that retirement under this section is an involuntary retirement for purposes of any other provision of law.

Subsection 638(e) would require that the Secretary of Defense provide uniform regulations for the administration of this section.

Section 639 would provide authority in certain cases for the Secretary of a military department to delay the otherwise involuntary separation or retirement of an officer who is subject to disciplinary or adverse administrative proceedings even though court martial charges have not been preferred. It is not intended that such delay would in any way impede the authority of the department concerned to execute the otherwise appropriate separation or retirement.

Section 640 relates to deferment of retirement or separation. This section would provide that, in the event hospitalization or medical observation is necessary to determine entitlement of a commissioned officer (holding a grade higher than warrant officer) to retirement or separation for physical disability, an officer's retirement or separation can be deferred by the Secretary concerned.

Additional provisions relating to promotion, separation, and retirement

Section 641 would exclude certain categories of officers from application of the general rules of chapter 36 dealing with the promotion, separation, and involuntary retirement of officers on the active duty list. The officers specified in this section would not be placed on the active-duty list and would not be eligible for promotion under the new chapter 36 as added by this Act.

Subsection 641 (1) would exclude certain reserve commissioned officers.

Paragraph (A) would exclude reserve officers on active duty for training.

Paragraph (B) would exclude reserve officers on active duty ordered to serve with the Reserve Forces Policy Board (section 175), the Army or Air Force Reserve Forces Policy Committees (section 3033 or 8033), or the Naval or Marine Corps Reserve Policy Boards (section 5251 or 5252); ordered to serve as Chief of the Army or Air Force Reserve Section (section 3019 or 8019); ordered to serve as Chief of the National Guard Bureau (section 3015); ordered to serve with the National Guard Bureau (section 3496 or 8496); ordered to serve on active duty to prepare and administer policies and regulations affecting reserve components (section 265); or ordered to active duty to serve as a property and fiscal officer (section 708 of title 32, United States Code).

Paragraph (C) would exclude reserve officers on active duty under the authority of section 672(d) of title 10, United States Code, for purposes related to the organization, administration, recruitment of, instruction of, or training of reserve components.

Paragraph (D) would exclude reserve officers on active duty to perform special work.

Paragraph (E) would exclude reserve officers ordered to augment the active force for short periods under 673b.

Paragraph (F) would exclude reserve officers on active duty to administer the Selective Service System (section 460 of the appendix to title 50, United States Code).

Subsection 641(2) would exclude officers holding certain positions at the United States Military Academy or United States Air Force Academy whose grades are specified in law.

Subsection 641(3) would exclude warrant officers.

Subsection 641(4) would exclude retired officers on active duty. These officers would only be eligible for temporary appointments to a higher grade under section 601 or section 603 as added by this Act.

Subsection 641(5) would exclude students at the Uniformed Services University of the Health Sciences. Such students serve in pay grade O–1 in accordance with section 2114 of title 10, United States Code.

Section 642 would authorize separation pay or retired pay for persons retired or discharged under proposed new chapter 36.

Subsection 642(a) would provide for entitlement to separation pay under proposed new section 1174 of title 10, as added by this Act.

Subsection 642(b) would provide that an officer retired under new chapter 36 will be entitled to retired pay computed under chapter 71 of title 10, United States Code.

Section 643 would provide the Secretary concerned with specific statutory authority to discharge a chaplain when a religious agency has withdrawn its endorsement to his continuation on active duty as a chaplain.

A clergyman is required by Department of Defense policy to secure the approval of his religious agency as a prerequisite to appointment in the Armed Forces. He retains his status as a chaplain in a military department based upon the continuance of his religious body's ecclesiastical endorsement. If his religious body withdraws its endorsement he must be separated from the military service.

As a consequence, a chaplain is subject to two jurisdictions: (1) his church superiors, and (2) his military supervisors. He is in a dual status. Were he not first a clergyman, he would not be a chaplain.

There are no statutes that specifically authorize the Secretary of a military department to discharge a chaplain on the loss of the endorsement which forms the basis for his appointment as an officer. This authority would correct the situation and any other grounds for discharge are left to the normal "for cause" separation procedures as provided in the proposed new chapter 60, of title 10, United States Code, as added by this Act.

Since the only ground for discharge is the withdrawal of ecclesiastical endorsement, the chaplain to be separated would not be afforded the right of a hearing. A hearing by a military department on the question of the merits of a religious body's withdrawal of ecclesiastical endorsement would be an inappropriate interference in matters wholly outside the scope of the military departments.

A chaplain subject to discharge under this proposal could, if he is eligible and so requests, be retired under any law authorizing retirement of a member of uniformed service. If he is not eligible to be retired, he would be honorably discharged.

Section 644 would grant authority to the President to suspend the operation of any law relating to the promotion, mandatory retirement, or separation of commissioned officers of the Army, Navy, Air Force, or Marine Corps in time of war or of national emergency declared after the effective date of this Act. The purpose of this provision is to permit the most effective utilization of commissioned officers during a war or emergency.

The President would be authorized to extend any suspension while a war or national emergency continues. The suspension would remain effective for two years from inception or, if extended, two years from the extension of the suspension. However, in no case would the suspension remain effective beyond the last day of the one-year period beginning on the date of termination of the war or emergency. This section also would make explicit that for this purpose it supplements the provisions of the National Emergencies Act with respect to the duration of powers exercised by reason of a national emergency.

AUTHORITY TO ORDER RETIRED MEMBERS OF REGULAR COMPONENTS TO ACTIVE DUTY; GRADE IN WHICH RESERVE OFFICERS ORDERED TO ACTIVE DUTY

Additions to chapter 39, active duty (section 106)

Section 106 of the bill would amend Chapter 39 by adding at the end thereof two new sections relating to the authority to order retired members to active duty and to the grade in which reserve officers are ordered to active duty.

Section 688 relates to the authority to order retired members to active duty.

Subsection 688(a) would provide for the promulgation of uniform regulations under which the Secretary concerned may order to active duty and assign duties to retired regular members. The proposed new subsection would restate the substance of current sections 3504(a) and 8504(a) of title 10, United States Code, but would include the Navy and Marine Corps within its scope of application.

Subsection 688(b) would entitle a regular member to be restored on the retired list in the highest grade in which the member served on active duty satisfactorily for at least six months, as determined by the Secretary concerned. This is a new provision that provides uniform rules for determining grade upon reversion to the retired list. Members who qualify for disability pay during the time on active duty following recall from the retired list are presently entitled to this benefit. Their grade upon return to the retired list is governed by sections 1373 and 1402(d) of the present title 10.

Section 689 would provide that wherever a reserve officer is ordered to active duty the officer must be ordered to active duty in the reserve grade that the officer holds.

RANK OF COMMISSIONED OFFICERS AMONG THEMSELVES

Section 107 of the bill

Section 107 of the bill would amend section 741 of title 10, United States Code.

Section 741 relates to rank among commissioned officers as follows:

Subsection 741(a) would establish relative rank of the various commissioned officer grades.

Subsection 741(b) would provide that rank among officers of the same grade or equivalent grades is determined by date of rank. An officer with an earlier date of rank is senior to an officer with a later date of rank.

Subsection 741(c) would provide that rank among officers of the same or equivalent grades who have the same date of rank is determined under regulations prescribed by the Secretary of Defense.

Subsection 741(d) would establish general rules for determining date of rank.

Paragraph (1) of subsection (d) of section 741 would provide that an officer's date of rank in a grade to which originally appointed will be determined by the Secretary of the military department concerned under regulations to be prescribed by the Secretary of Defense. However, such date of rank shall reflect such credit as awarded the officer for prior commissioned service and constructive service.

Paragraph (2) of subsection (d) of section 741 would provide that the date of rank of an officer who has been promoted will be the effective date of appointment to that grade except as otherwise provided by law.

Paragraph (3) of subsection (d) of section 741 would provide that when a reserve officer is placed on the active-duty list after a break in active service, his date of rank may be adjusted to a later date to more accurately reflect such officer's qualifications and experience.

RIGHT OF RETIRED OFFICERS TO COMMAND

Section 108 of the bill

Section 108 of the bill would amend chapter 43 of title 10, United States Code by adding a new section as follows:

Section 750 would provide that a retired officer has no right to command unless such officer is serving on active duty.

SEPARATION PAY UPON INVOLUNTARY DISCHARGE OR RELEASE FROM ACTIVE DUTY

Separation pay (section 109)

Subsection 109(a) of the bill would repeal section 687 of title 10, United States Code, relating to readjustment pay for nonregular officers.

Subsection 109(b)(1) of the bill would amend section 1165, of title 10, United States Code, relating to separation of regular warrant officers during their probationary period to authorize entitlement, if eligible therefore, to separation pay under the proposed new section 1174(b) as added by this Act. This amendment is necessary to provide similar treatment for warrant officers and commissioned officers.

Subsection 109(b)(2) of the bill would amend section 1166(a) relating to elimination of regular warrant officers for unfitness or unsatisfactory performance, to provide that officers discharged under this section are entitled, if eligible therefore, to separation pay under the proposed new section 1174(b) of title 10, United States Code, or severance pay under the proposed new section 286(a) of title 14, United States Code, as appropriate.

Subsection 109(b)(3) would repeal section 1167 of title 10, United States Code, relating to severance pay for regular warrant officers.

Subsection 109(c) of the bill would amend chapter 59 of title 10, United States Code, by adding at the end thereof a proposed new section 1174, relating to separation pay upon involuntary discharge or release from active duty as follows:

Section 1174 would provide for a standard name (separation pay), standard formula for computing the amount of separation pay, and uniform rules governing eligibility for entitlement to such pay. It would apply to all members of the Army, Navy, Air Force and Marine Corps, except regular enlisted members since they are not covered by existing law. The payment is intended to assist the members, regardless of component, who are involuntarily separated in adjusting to civilian life.

Subsection 1174(a) would provide that a regular officer discharged under this proposed new chapter 36 (other than section 630 or 643), under sections 564 or 6383 of title 10, United States Code, or under section 603 or 604 of the Defense Officer Personnel Management Act who has completed at least five, but less than 20, years of active service before separation is entitled to separation pay computed under subsection (d)(1). Although the last phase of the term of five years, but less than twenty, must reach a terminus immediately preceding the relevant discharge, there is no requirement that the qualifying years be continuous.

Subsection 1174(b) would provide that a regular officer discharged under the proposed sections 630 (during probationary period), 643 (loss of ecclesiastical endorsement), or 1186 (as a result of "show cause" proceedings) of title 10, United States Code, or a regular warrant officer separated under current sections 1165 or 1166 of title 10, United States Code, who has completed at least five, but less than 20, years of active service before separation, is entitled to separation pay computed under subsection (d). However, the Secretary concerned may, if the circumstances warrant, deny such payment. That determination would be in accordance with the instructions provided by the Secretary of Defense. Although the first phase of the term of five years, but less than twenty, must reach a terminus immediately preceding the relevant discharge, there is no requirement that the qualifying years be continuous.

Subsection 1174(c) would provide that a nonregular member who on or after the effective date of the Defense Officer Personnel Management Act is discharged or released from active duty and has completed at least five, but less than 20, years of active service before separation is entitled to separation pay computed under subsection (d). To qualify, the member's discharge or release from active duty must be involuntary or the member's request for an additional tour of active duty must not have been accepted. However, the Secretary may, if the circumstances warrant, deny such payment. That determination will be made in accordance with the instructions provided by the Secretary of Defense. Although the last phase of the term of five years, but less than twenty, must reach a terminus immediately preceding the relevant discharge, there is no requirement that the qualifying years be continuous.

Subsection 1174(d) would provide two formulas for computing the separation payment. The first standard is 10 percent of the product of the member's years of active service and 12 times the monthly basic pay to which entitled at the time of discharge or release from active duty or $30,000, whichever is less. The second (reduced) standard is one-half the sum computed uner the first formula but not more than $15,000. In determining the formula to be used, the Secretary concerned will be governed by the criteria provided by the Secretary of Defense as required by subsection (i).

Subsection 1174(e) would provide that a member separated in the following circumstances is not eligible for a separation payment under this section:

(1) Discharge or release from active duty at the request of the member.

(2) Release from active duty for training; or

(3) Upon discharge or release from active duty, is immediately eligible for retired or retainer pay based on military service.

Subsection 1174(f) would provide that for the purpose of determining years of active service to be used in computing the separation payment, a part of a year that is six months or more is counted as a whole year. A part of a year that is less than six months is disregarded.

Subsection 1174(g)(1) would provide that any period for which a member received a separation payment under this section, or severance pay or readjustment pay under any provision of law, will be excluded in determining the years of active service to be used as a multiplier under this section. This provision will preclude counting the same active service twice in determining the amount of separation pay.

Subsection 1174(g)(2) would limit the total amount of pay that a member may receive. In no case may the amount exceed $30,000.

Subsection 1174(h)(1) would provide that any military separation pay received under this section, or severance pay or readjustment pay received under any provision of law shall be deducted from any military retired or retainer pay to which the member may become entitled under titles 10 or 14, United States Code. Monthly retired or retainer pay will be reduced by the amount of that pay that is based on the service for which the member received the separation payment, severance pay, or readjustment pay. Reduction will continue until the total deductions equal the amount of the separation payment, severance pay, or readjustment pay received.

Subsection 1174(h)(2) would provide that the receipt of a separation payment under this section, or severance pay or readjustment pay under any provision of law, will not deprive the member from receiving any disability compensation to which entitled under laws administered by the Veterans' Administration. However, such payment will be deducted from the compensation. Such reduction does not apply to compensation where the entitlement to the compensation is based on a later period of active duty.

Subsection 1174(i) would require the Secretary of Defense to prescribe uniform regulations for the administration of this section. Such regulations should define the circumstances that would warrant payment under the reduced formula and the conditions that would preclude the payment of any separation pay. It is intended that the authority to deny payment be used sparingly and limited to serious misconduct.

INVOLUNTARY SEPARATION OF REGULAR OFFICERS FOR SUBSTANDARD PERFORMANCE OF DUTY OR FOR CERTAIN OTHER REASONS

Separation of regular officers (section 110)

Section 110 of the Bill would amend Part II of subtitle A of title 10, United States Code, by inserting a proposed new chapter 60, consisting of sections 1181–1187.

Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons (section 1181).

Subsection 1181(a) would authorize the Secretary concerned, under regulations prescribed by the Secretary of Defense, to convene boards to determine whether a regular commissioned officer, other than a commissioned warrant officer or a retired officer, should be required to show cause for his retention on active duty because his performance of duty has fallen below standards prescribed by the Secretary of Defense.

Subsection 1181(b) would authorize the Secretary concerned, under regulations prescribed by the Secretary of Defense, to convene boards to determine whether a regular commissioned officer, other than a warrant officer or a retired officer, should be required to show cause for his retention on active duty because of misconduct, moral dereliction, professional dereliction, or a reason involving national security.

Board of inquiry (section 1182).

Subsection 1182(a) would provide that the boards of inquiry are to be composed of three or more officers who would receive evidence and make findings and recommendations as to whether an officer should be retained on active duty.

Subsection 1182(b) would provide that an officer required to show cause be given a fair and impartial hearing by the board.

Subsection 1182(c) would provide that, if the board determines that the officer should be removed, the board forward the record of its proceedings to a board of review which would be constituted and would function as prescribed in proposed new section 1183 of title 10, United States Code, as added by this Act.

Subsection 1182(d) would provide that if an officer has established that he should be retained his case is closed. If the basis for the proceedings is substandard performance of duty, he may not be again required to show cause within one year after it was determined that he should be retained on active duty. If he was required to show cause because of misconduct, moral or professional dereliction, or a reason involving national security, he may not be required to show cause at any time after a determination was made that he should be retained if the basis for a subsequent show cause action is only the same conduct that was the basis of the first proceeding. An exception is made in cases where the recommendation of the first board was obtained by fraud or collusion.

Board of review (section 1183).

Sction 1183 would provide that boards of review, composed of not less than three officers, be convened to review the records of all proceedings forwarded by boards of inquiry. If a board of review determines that an officer has failed to establish that he should be retained, the board's recommendation would be forwarded to the Secretary concerned for appropriate action. If the board of review determines that the officer should be retained, the case would be closed. This section contains the same limitations on subsequent proceedings as those specified for boards of inquiry.

Removal of officers: action by secretary upon recommendation of board of review (section 1184).

Section 1184 would authorize the Secretary concerned to remove (or retain) an officer if removal is recommended by a board of review. The Secretary's action in such a case is final.

Rights and procedures (section 1185).

Section 1185 would specify that, under regulations prescribed by the Secretary of Defense, each officer required to show cause under the proposed new section 1181, as added by this Act, would be entitled:

(a) To written notification, 30 days in advance of the hearing before the board of inquiry, of the reasons for which he is required to show cause for retention on active duty;

(b) To reasonable time for preparation of a defense;

(c) To appear in person and be represented by counsel before the board of inquiry; and

(d) To access to all relevant records, with the possible exception of documents that the Secretary determines should be withheld in the interest of national security. To the extent permitted by considerations of national security, these may be given to the respondent in summary form.

Officers considered for removal: voluntary retirement or discharge (section 1186)

Subsection 1186(a) would provide that at any time during the proceedings and before the removal of an officer, the Secretary concerned may grant the officer's request for voluntary discharge or retirement, if eligible. The type of discharge will depend on the reason for discharge as explained below.

Subsection 1186(b) would provide that if the Secretary removes the officer under proposed new section 1184 he will be retired, if eligible; or (1) honorably discharged if he was required to show cause under proposed new section 1181(a), or (2) discharged if he was required to show cause under proposed new section 1181(b). A distinction in the type of discharge that may be given is made to permit the issuance of a discharge, under less than honorable conditions, for an officer who is discharged for the reasons set forth in proposed new section 1181(b).

Subsection 1186(c) would provide that an officer discharged under this section is entitled to separation pay if qualified under the new section 1174 of title 10, United States Code, as added by the Act.

Officers eligible to serve on boards (section 1187)

Subsection 1187(a) would provide that boards are to be composed of officers of the same military service as the officer being considered.

Such officers must be (1) serving on active duty in a grade above lieutenant colonel or commander (in the Navy); and (2) senior in regular grade and rank to the officer being considered. If there are not enough officers available on active duty to comprise a board, retired regular officers of the same military service may be members.

Subsection 1187(b) would provide that no officer may be a member of more than one board convened under this chapter for the same respondent.

RETIREMENT OF REGULAR COMMISSIONED OFFICERS AT AGE 62

Section 111 of the Act would create a new section 1251 to be inserted before section 1263 in chapter 63.

Age 62: regular commissioned officers; exceptions (section 1251)

Section 1251 would establish uniform rules for the mandatory retirement of commissioned officers (other than warrant officers) for age as follows:

Subsection (a) would require the retirement of a regular officer on the first day of the month following the month in which the officer reaches age 62. Excepted from this general rule are permanent professors, directors of admission, and registrars of the Army and Air Force military academies (these officers must be retired on the first day of the month following the month in which they reach 64 years of age). The subsection would not apply to officers holding a grade above general or admiral on the effective date of this Act. Under current law, the general rule for retirement of Navy and Marine Corps officers for age is 62 years; Army and Air Force law generally requires the retirement of commissioned officers holding regular grades below major general at age 60; regular major generals must retire for age at age 62. Regular warrant officers are retired for age at 62 under current section 1263.

Subsection (b) would authorize the President to defer the retirement of an officer serving in a grade or a position that carries a grade above O–8 until the officer becomes 64 years of age. Such officers serve in positions of unusual importance and responsibility. Current law also authorizes the President to defer the retirement of such officers to age 64. This subsection would limit the number of these deferments to not more than 10 at any one time.

RETIRED GRADE OF COMMISSIONED OFFICERS

Section 112 of the Act would amend Chapter 69 by adding a new section 1370 to establish a new basic rule for determining the retired grade of commissioned officers, other than those retired for non-regular service or retired for physical disability.

Section 1370 would establish the general rule and exceptions for determining the member's retired grade.

Subsection 1370(a) would establish the general criterion that a regular, reserve, or temporary commissioned officer, other than a commissioned warrant officer, retires in the highest grade in which he served on active duty satisfactorily for six or more months. However, to be granted voluntary retirement in grades O–5, O–6, O–7 or O–8, an officer must have served on active duty at least three years in such grade. (Current law does not require any minimum period of service for an officer to retire voluntarily in his permanent grade. An Army or Air Force officer must serve satisfactorily for six months in a temporary grade which is higher than his permanent grade to retire in that higher grade.)

This constraint upon voluntary retirements prior to the completion of three years in grade could be waived by the President. No limit would be placed on the authority of the President to waive the three-year requirement. The general intent of this provision, however, is to allow the three-year requirement to be waived when it is in the best interests of the military department concerned or when humanitarian or hardship considerations exist and reason suggests that voluntary retirement in grade should be allowed. Such waiver power is non-delegable. Paragraph (3) of 1370(a) would establish that a reserve or temporary officer who requests voluntary retirement, after he is notified that he will be involuntarily released from active duty, is not affected by the new rule requiring three years in grade; but a regular officer's retirement required under proposed new section 1186(b), a retirement for cause, is considered to be voluntary for the purposes of this section.

Subsection 1370(b) would provide that an officer who retires voluntarily prior to having served either the minimum term of six months in grade as mandated by subsection 1370(a)(1), or the three-year term prescribed by subsection 1370(a)(2), would retire in the next lower grade. This would be the case even though the officer had not served the applicable minimum period of time in that lower grade. In the instance of an officer who has served six months in grade, but who has not served a term of three years in that highest grade, a Presidential waiver pursuant to subsection 1370(a)(2) could effect a retention of highest active duty grade into retirement. However, in the case of an officer who has not completed a minimum term of six months satisfactory service, there is no provision for waiver, and the officer would accordingly have to be retired in the next lower grade.

Subsection 1370(c) would provide that an officer serving in or who has previously served in a grade above major general or rear admiral may, upon retirement, be appointed by the President to the highest active duty grade held. Such appointments would be subject to Senate confirmation but no minimum period of active service in the retirement grade would be required.

COMPUTATION OF RETIRED PAY FOR REGULAR OFFICERS RETIRING FOR AGE OR YEARS OF SERVICE

Section 113(a)(1) of the Act would amend chapter 71 by amending current section 1401, relating to computation of retired pay, by adding new formula 5 to the table contained in section 1401. This formula would prescribe the method of computing the retired pay of regular officers who are retired under proposed new sections 633, 634, 635, 636 and 1251.

The proposed formula would carry over into section 1401 the substance of the formulas for computing the retired pay of officers of the Regular Army now contained in current section 3991 (formula A), of the Regular Navy and Regular Marine Corps now contained in current section 6381, and of the Regular Air Force now contained in current section 8991 (formula A), with two exceptions.

Current section 6381 entitles a Navy or Marine Corps officer to compute retired pay based on the highest grade held or served in at the time of retirement. New formula 5 would require that the member's retired grade (which might be lower) be used for this computation.

Formula A of current sections 3991 and 8991 entitles a retired officer to retired pay computed at 50 percent of his basic pay in certain cases in which an officer has less than 20 years creditable retirement service. New formula 5 would not carry forward this entitlement because this Act would require a minimum of 20 years service as a condition precedent to non-disability retirement for officers on an active-duty list. Formula 5 would provide that officers retired under new sections 633, 634, 635, 636 and 1251 would be entitled to monthly retired pay computed by multiplying the monthly basic pay of the grade to which the member is entitled on retirement by 2½ percent of the years of service credited under section 1405, as amended by the Act, reduced, if necessary, by any amount necessary to limit retired pay to 75 percent of the pay on which the computation is based.

Section 113(a)(2) of the Act would add a proposed new footnote 5 (after current footnote 4) to the table contained in current section 1401. This new footnote would carry over, without substantive change, a portion of current footnote 1 to the table in sections 3991 (Army) and 8991 (Air Force). It would provide that, for the purpose of computing retired pay, the retired grade of brigadier general, in which a permanent professor of the United States Military Academy or Air Force Academy is retired under current section 3962(c) or 8962(b), be disregarded.

Section 113(b) of the Act would amend current section 1405 which specifies the years of service that are creditable as a multiplier in computing retired pay.

Section 1405 would no longer permit the crediting of certain periods of constructive service in computing the retired pay of medical and dental officers who are appointed on or after he effective date of the Act. Members would compute their years of service for retirement pay by adding (1) years of active service, (2) years of service not otherwise counted with which the member was entitled to be credited on May 31, 1958, and (3) years of service not otherwise counted with which he would be credited under current section 1333 (governing the computation of years of nonregular service for retirement at age 60).

Section 113(c) of the Act would amend current section 1407(b)(4) so as to insure that persons who become members of the uniformed services after September 8, 1980, and subsequently become eligible for retirement under the provisions of proposed sections 633, 634, 635, 636 and 1251 have their pay computed under the thirty-six-month averaging system introduced into title 10 by the Department of Defense Authorization Act, 1981.

OFFICERS ATTENDING UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES TO BE COUNTED AGAINST AUTHORIZED MILITARY STRENGTHS

Section 114(a) of the Act would amend current section 2114(b) by removing the provision that exempts students at the Uniformed Services University of the Health Sciences from being "counted against any prescribed military strengths." This allows the inclusion of these students in computing authorized strengths under proposed new section 453.

EXTENSION OF RESTRICTIONS ON PERFORMANCE OF CIVIL FUNCTIONS TO ALL OFFICERS ON ACTIVE DUTY

Section 116(a) of the Act would amend section 973(a) to extend the restriction on outside employment currently affecting regular officers to all active-duty officers. Section 116(b) amends 973(b) to substitute a more concise mode of expression for the extensive listing of officers of the regular components of each armed force.

PERMANENT AUTHORITY FOR CERTAIN PROVISIONS RELATING TO DISABILITY RETIREMENT

Section 117 of the Act would amend the sections of title 10 dealing with disability retirements and separations for physical disability. The Act, in effect, makes the vesting of retirement or separation pay contingent upon a simple finding of line of duty, rather than the more onerous criterion that the disability was "the proximate result of performing active duty."

TITLE II—AMENDMENTS TO SUBTITLES B AND D OF TITLE 10, UNITED STATES CODE—THE ARMY AND THE AIR FORCE

PART A—AMENDMENTS RELATING TO OFFICER APPOINTMENT, PROMOTION, SEPARATION, AND MANDATORY RETIREMENT

Repeal of sections providing for temporary appointments in grade of general and lieutenant general (section 201)

Section 201 of the Act would repeal sections 3066 and 8066. General provisions relating to temporary appointments to the grade of lieutenant general or vice admiral, or general or admiral are covered by the proposed new section 601 as added by this Act. Designations made under the provisions of section 3066 or 8066 are intended to continue in force as though made in accordance with the proposed new section 601.

Repeal of sections relating to authorized strength of the Army and of the Air Force (section 202)

Section 202 of the Act would repeal the following sections of current chapters 331 and 831, relating to strength of the Army and Air Force:

Sections 3201 and 8201, 3203 and 8203, relating to the authorized strength of Army and Air Force members on active duty. Total strength is currently authorized annually by the Congress.

Sections 3204 and 8204, 3205 and 8205, 3206 and 8206, 3207 and 8207, 8208, 3209 and 8209, and 3213 and 8213 and 8215, relating to the strength of various categories of regular Army and regular Air Force officers. The proposed new section 522 as added by this Act would establish the authorized strength of regular commissioned officers on active duty.

Sections 3211 and 8211 relating to regular Army and regular Air Force strength in active duty officer grades. The regulation of strengths in active duty grades is governed by the proposed new chapter 30 as added by this Act.

Sections 3214, 8214, and 3216 relating to the strength of regular Army and Air Force enlisted members on active duty. Active duty strengths are authorized annually by Congress.

Authorized strength in grade for general officers (section 203)

Section 203 of the Act would amend sections 3202 and 8202 relating to authorized strengths in certain commissioned grades in the Army and the Air Force so that the amended sections would provide the basis for calculating the authorized strength in general officers only. The basis for calculating the authorized strengths in colonels, lieutenant colonels, and majors would be provided in the proposed new section 523(a)(1)

Repeal of sections relating to appointments of commissioned officers in the regular Army and in the regular Air Force (section 204)

Section 204 of the Act would repeal sections 3284 and 8284, 3285 and 8285, 3286 and 8286, 3287 and 8287, 3288 and 8288, 3289 and 8289, 3290, 3291, 3292, 3293 and 8293, 3294 and 8294, 3295 and 8295, 3296 and 8296, 3297 and 8297, 3298 and 8298, 3299 and 8299, 3300 and 8300, 8301, 3302 and 8302, 3303 and 8303, 3305 and 8305, 3306 and 8306, 3307 and 8307, 3308 and 8308, 3309 and 8309, 3312 and 8312, 3313 and 8313 and 3314 and 8314. These provisions relate to the appointment and qualifications of commissioned officers in the regular Army and regular Air Force; promotion lists and placement on promotion lists; the convening, composition and duties of boards to select regular officers for promotion; promotion eligibility, effect of failure of promotion, selection procedures, removal of selected officers from a promotion list, and promotion of officers of the regular Army and the regular Air Force; and the suspension of laws for promotion, mandatory retirement and separation during a war or emergency. Uniform procedures relating to these provisions are established by the proposed new sections 531 through 533 and chapter 36, as added by this Act.

While these sections would be repealed to provide uniform appointment criteria, it is the intent of the committee that those provisions related to special qualifications for appointment in certain special branches, such as the provisions of section 3291 relating to the qualification of nurses, be preserved through regulations issued by the service secretaries.

Service credit upon original appointment of reserve commissioned officers (section 205)

Section 205 of the Act would amend current sections 3353 and 8353 relating to the service credit that individuals may receive upon original appointment as reserve commissioned officers in the Army and the Air Force. The purpose of this amendment is to make these sections of law generally consistent with proposed new section 533 which authorizes crediting of constructive service in connection with appointment as a regular commissioned officer in the Army or Air Force. It is necessary that the provisions of law relating to constructive service for original appointment as a reserve commissioned officer be consistent with and essentially parallel the provisions for original appointment in the regular Army or regular Air Force in order that a reserve officer on active duty who has been credited with constructive service and who is appointed as a regular officer maintains his position on the active-duty list. It is intended that no individual may receive more credit under these sections than that individual would have received if appointed as a regular officer under section 533.

Since not all original appointments of individuals as reserve officers are made with a view to entry on extended active duty, the constructive service provisions for reserve appointment do not exactly parallel those for regular appointment. Where an individual receives constructive service upon original appointment as a reserve officer and is subsequently ordered to active duty and placed on the active-duty list, the constructive service credited will be used (along with other relevant factors) for determining the officer's position on the active-duty list. Constructive service credited upon original appointment as a reserve officer would, in the case of an officer who is not ordered to active duty, be used to determine reserve grade, rank in grade, service for promotion eligibility, service for determining mandatory retirement dates, and all other purposes provided by existing law.

Exclusion of reserve officer on the active-duty list from certain provisions relating to appointments of reserve officers (section 206)

Section 206(a) of the Act would amend chapter 337 by adding proposed new section 3396, which provides that, except for section 3353, reserve officers of the Army who are subject to the provisions of proposed new chapter 36 (active-duty list officers) will not be subject to the provisions of current chapter 337 governing promotion of reserve officers. Current chapter 337 governs the promotion of reserve officers of the Army to permanent grades. New chapter 36, however, provides for a single promotion system for active-duty list officers without regard to reserve or regular status. Thus, to achieve a single promotion system it is necessary to exempt active-duty list reserve officers from the operation of current laws regulating reserve promotions. Current section 3353 (as amended by this Act), relating to the award of constructive service, will still apply to active-duty list reserve officers.

Section 206(b) of the Act would add a proposed new section 8396 to current chapter 837, which contains provisions similar to those contained in proposed new section 3396, and would be added for the same reasons as new section 3396 would be added to chapter 337.

Repeal of sections relating to temporary appointments of commissioned officers (section 207)

Section 207 of the Act would repeal the following sections of chapters 339 and 839: sections 3441 and 8441, 3442 and 8442, 3444 and 8444, 3445 and 8445, 3447 and 8447, 3451 and 8451, and 3452 and 8452. These sections relate to the appointment of officers in the Army and Air Force without specification as to component (reserve or regular); appointment of regular and reserve officers of the Army and Air Force to temporary grades higher than their permanent grades; temporary appointments during a war or emergency; and the method of accepting and terminating temporary appointments. These provisions are superseded by the proposed new section 603, as added by this Act, which authorizes temporary appointments only in time of war, or of national emergency declared by the President or the Congress.

Repeal of sections relating to temporary appointments of warrant officers (section 208)

Section 208 of the Act would repeal sections 3448 and 8448 relating to temporary appointment of warrant officers in the Army and the Air Force, and sections 3449 and 8449 relating to the temporary promotions of warrant officers in the Army and the Air Force. The proposed new section 602, as added by this Act, would authorize the Secretary of the military department to promote a warrant officer to a higher temporary grade.

Grade in which reserve officers are ordered to active duty (section 209)

Section 209 of the Act would repeal sections 3494 and 8494 relating to the grade in which reserve commissioned officers are ordered to active duty. The proposed new section 689, as added by this Act, would provide that whenever a reserve officer is ordered to active duty that officer is ordered to active duty in the reserve grade that such member holds.

Retired regular members ordered to active duty (section 210)

Section 210 of the Act would repeal sections 3504 and 8504 relating to the ordering of retired regular members of the Army and Air Force to active duty. The substance of this authority is now provided for in the proposed new section 688, as added by this Act.

Repeal of sections relating to rank and command (section 211)

Section 211 of the Act would repeal the following sections of chapters 345 and 845 relating to rank and command: 3571 and 8571, 3573 and 8573, 3574 and 8574, and 3582 and 8582. The proposed new section 741, as added by this Act, provides rules for determining seniority among commissioned officers of the military services.

Command by commissioned officers of the Army Medical Department and by commissioned officers of the Air Force in certain categories (section 212)

Section 212(a) of the Act would amend current section 3579 (relating to authority of Army Medical Department officers to command) by deleting provisions that restrict the authority of members of the Army Nurse Corps and Army Medical Specialist Corps to exercise command within the Army Medical Department. Under current law, such officers may exercise command only within their own corps. When originally enacted, these provisions were designed to restrict the authority of women to exercise command within the other corps of the Army Medical Department. Such a distinction is no longer necessary or desired in view of the equalization of treatment of women in the bill.

Section 212(b) would amend current section 8579 (restricting the authority of Air Force nurses and medical specialists to exercise command) for similar reasons as stated in the previous paragraph. The revised section 8579 would substitute the term "biomedical sciences officer" for "medical specialist" and provide the same limits on the exercise of command for officers designated as nurses and biomedical sciences officers as presently exists for officers designated as medical, dental, veterinary or medical service officers.

Repeal of chapters providing for involuntary separation of regular officers for unsatisfactory performance of duty and for certain other reasons (section 213)

Section 213 of the Act would repeal chapters 359 and 859 relating to separation of regular commissioned officers of the Army and the Air Force for substandard performance of duty, and chapters 360 and 860 relating to separation of regular commissioned officers for moral or professional dereliction or in the interests of national security. The substance of these chapters is carried forward in the proposed new chapter 60, as added by this Act, which would also apply to the Navy and Marine Corps.

Repeal of sections authorizing discharge of regular officers during three-year probationary period (section 214)

Section 214 of the Act would repeal sections 3814 and 8814 relating to discharge of regular commissioned officers of the Army and the Air Force during a three-year probationary period. The substance of these provisions is carried forward in the proposed new section 630, as added by this Act.

The probationary period is changed from three to five years but prior commissioned service as a reserve is counted in determining the probationary period.

Retention in active status of certain reserve officers until age 60 (section 215)

Section 215(a) of the Act would amend section 3855 relating to retention in an active status of certain reserve officers of the Army until age 60. It would add two new categories, podiatrists and optometrists, to the categories of reserve officers the Secretary of the Army may, with the officer's consent, retain in an active status until age 60. Under current authority, medical and dental officers, chaplains, nurses and medical specialists can be retained. Section 3855 is also amended to specify that retention in an active status would be authorized only to fill a bona fide mission-based requirement.

Section 215(b) would amend section 8855 relating to the retention in an active status of certain reserve officers of the Air Force until age 60, in the same maner and for the same purpose as section 3855, as explained in the preceding paragraph. It would also substitute the term "biomedical sciences officer" for the obsolete term "Air Force medical specialist."

Repeal of chapters relating to retirement for age of regular commissioned officers (section 216)

Section 216 of the Act would repeal chapters 365 and 865 relating to the retirement for age of regular commissioned officers of the Army and the Air Force. The proposed new section 1251, as added by this Act, would establish a uniform rule requiring the mandatory retirement of commissioned officers upon reaching age 62, except for certain officers who would be retired upon reaching age 64.

Repeal of sections relating to retirement for length of service (section 217)

Section 217 of the Act would repeal the following sections of chapters 367 and 867 relating to retirement for length of service: sections 3913 and 8913, 8915, 3916 and 8916, 3919 and 8919, 3921 and 8921, 8922, 3923 and 8923, and 3927 and 8927. These sections relate to separation of regular commissioned officers not promoted to the permanent grade of captain, major or lieutenant colonel; deferment of retirement of officers of the Air Force designated as nurses or medical specialists; mandatory retirement of regular Army and Air Force officers holding the regular grade of lieutenant colonel; retirement of regular officers with over 30 years of service when there is an excessive number on active duty; mandatory retirement of regular Army and Air Force officers holding the grade of colonel; mandatory retirement of regular Army and Air Force officers holding the grade of brigadier general and major general; and defining service creditable for determining mandatory retirement date for length of service. Retirement and separation of regular commissioned officers would be in accordance with the proposed new chapters 36 and 60 and section 1251, as added by this Act.

Director of Admissions of United States Military Academy; Registrar of the United States Air Force Academy (section 218)

Section 218 of the Act would amend sections 4336 and 9336 by repealing current subsections (c) that provide that an officer detailed to perform the duties of registrar (but not appointed as registrar) of the United States Military Academy or the Air Force Academy has the temporary grade of lieutenant colonel and, after performing those duties for a period of six years, has the temporary grade of colonel. Under proposed new chapter 36, such an officer would be on the active-duty list and compete for promotion to permanent grades. To conform with the general principle of the bill that a promotion results from selection by a broad of officers, subsections

(c) would be repealed. This revision would not affect existing provisions of law for persons appointed as registrar of the United States Military Academy or the Air Force Academy.

PART B—MISCELLANEOUS AMENDMENTS

Authority to establish new staff corps in the army (section 231)

Section 231 of the Act would amend current section 3064 to provide authority to the Secretary of the Army to establish new special branches for the Army and appoint commissioned officers in, and assign members to, those branches.

Personnel detailed outside the Department of Defense to be counted in computing strengths (section 232)

Section 232 of the Act would repeal sections 3230 and 8230. Essentially, these sections provide that members of the Army and Air Force detailed for duty with agencies of the United States outside the Department of Defense on a reimbursable basis are not counted in computing strengths under any law. Such members would be counted, under the provisions of this Act, in computing strengths.

Officers serving as Chief of Staff to the President to be included in authorized strengths (section 233)

Section 233 of the Act would strike out the last sentence of section 3531 and section 8531. These amendments would repeal current provisions of law that entitle an Army or Air Force officer appointed as Chief of Staff to the President to the grade, rank, pay, and allowances of a general as the sole result of such appointment. Other authority exists for the promotion of such officers to the grade of general. These amendments would also repeal provisions that exempt these officers from accountability under grade limitations.

Grade of the Special Assistant to Comptroller of the Department of Defense (section 234)

Section 234 of the Act would repeal section 3532. Section 3532 provides that a colonel on the active list of the Regular Army who is detailed as Special Assistant to the Comptroller of the Department of Defense, has the grade of brigadier general while so serving, unless he is entitled to a higher grade. This section would be repealed in order to conform to the principle that promotions to higher grades result from board recommendations and that rules relating to grade management be made uniform among the military services. In essence, it would eliminate a minimum grade requirement for that position.

Rank, pay, and allowances of Assistant to the Chief of Engineers (section 235)

Section 235 of the Act would repeal section 3535. Section 3535 provides essentially that an officer assigned as Assistant to the Chief of Engineers in charge of civil works is authorized the rank, pay, and allowances of a brigadier general. This section, as the above section relating to the Special Assistant to the Comptroller of the Department of Defense, would be repealed because of the principle that promotion to higher grades should result from board recommendations and that rules relating to grade management be made uniform among the services.

Repeal of sections authorizing termination of appointment or enlistment of regular female members (section 236)

Section 236 of the Act would repeal section 3818 and section 8818. These sections provide for the termination of appointment or enlistment of regular female members of the Army and the Air Force. The repeal of these sections would eliminate the differences in law relating to the discharge of male and female members.

Repeal of prohibition on women being enlisted as aviation cadets in the Regular Air Force (section 237)

Section 237 of the Act would amend section 8257 relating to the appointment of aviation cadets by striking out "male" to conform this section with the principle of equalization of the treatment of women followed throughout this Act.

TITLE III—AMENDMENTS TO SUBTITLE C OF TITLE 10, UNITED STATES CODE—THE NAVY AND MARINE CORPS

PART A—PERMANENT GRADE OF COMMODORE ADMIRAL IN THE NAVY

Establishment of permanent commodore admiral grade (section 301)

Section 301 of the Act would amend current section 5501, relating to Navy grades above chief warrant officer, W-4, by inserting the grade of commodore admiral between captain and rear admiral. This change is necessary to establish a fourth flag grade in the Navy at the O–7 level. It is the intent of the committee that the grade of commodore admiral in the Navy be similar to brigadier general in the Marine Corps, Army and Air Force. Sections 5597 and 5787 would be repealed, eliminating the authority to create the wartime grade of commodore in the Navy.

Number of Navy staff corps officers serving in grades of commodore admiral and rear admiral (section 302)

Section 302 of the Act would amend section 5444 such that it pertains only to flag officers in the staff corps of the Navy. Authority for serving in the grades of captain, commander and lieutenant commander would now be contained in proposed section 453 of the Act. Therefore it is necessary to retain section 5444 to provide authority to the Navy for flag officers on active duty in the staff corps. Elimination of certain Navy staff corps within the law is proposed only to maintain uniformity in statute among the Services. It is the intent of the committee that the Secretary of the Navy have the flexibility to establish or disestablish any staff corps, other than Medical, Dental, Judge Advocate General and Chaplain, that he believes are necessary to the Service. The section would provide a table relating the total number of officers in all the staff corps on active duty in the grades of ensign and above, excluding officers carried as additional numbers in grade, to maximum number of commodore admirals and rear admirals of the combined staff corps that may be authorized. This section would retain the requirement for the Secretary of the Navy

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96–1462

DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

NOVEMBER 13, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NICHOLS, from the Committee on Armed Services, submitted the following

REPORT

[To accompany S. 1918]

[Including cost estimate of the Congressional Budget Office]

The Committee on Armed Services to whom was referred the bill (S. 1918) to amend title 10, United States Code, to revise and make uniform the provisions of law relating to appointment, promotion, separation, and retirement of regular commissioned officers of the Army, Navy, Air Force, and Marine Corps, to establish the grade of commodore admiral in the Navy, to equalize the treatment of male and female commissioned officers, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill is a complete substitute therefor and appears in italic type in the reported bill.

The amendment to the title of the bill makes minor technical wording changes.

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to compute, at least annually, the number of officers authorized under section 5444. Likewise, it would enable the Secretary to specify a lesser number of commodore admirals and rear admirals and apply the subsequent reduction as an increase in prescribed numbers of lower grades.

Section 302 of the Act would permit carrying an officer whose appointment is terminated as the chief of a bureau as a number in excess of the prescribed number until such time as a vacancy becomes available in his corps and would permit no variation of prescribed numbers between computations by the Secretary.

Each officer counted under this section would be counted in the grade in which he is serving whether his appointment is permanent or temporary. However, any officer serving under a temporary appointment of sections 603 of title 10 would be counted as if they had not been so appointed or promoted.

The section would require the Secretary to prescribe the number of rear admirals in each staff corps, but the total number of all rear admirals of the combined staff corps could not exceed 50 percent of the total number of flag officers computed under this section. Likewise, the Secretary would also prescribe the total number of commodore

For the purposes of this section, flag officers in the Judge Advocate General Corps would be considered additional numbers in grade and officers of the Judge Advocate General Corps would not be included in the computations.

PART B—AMENDMENTS RELATING TO OFFICER STRENGTH AND DISTRIBUTION IN GRADE

Repeal of sections relating to officer strength and of the Navy and Marine Corps (section 311)

Subsection 311(a) of the Act would repeal numerous sections that authorize strengths of enlisted personnel and officers of the Navy and Marine Corps. Although this section eliminates maximum strength limitations, specific staff corps, special duty officer and limited duty officer ceilings, it is the intent of the committee to permit the Secretary of the Navy to establish whatever officer corps he deems appropriate. Rather than limit the Secretary to only those corps named within the law, it is intended that the Secretary have additional flexibility to designate categories of officers without seeking Congressional approval.

Subsection 311(b) of the Act would amend the heading of chapter 531.

Personnel detailed outside the Department of Defense to be counted in computing strength (section 312)

Section 312 of the Act would repeal current section 5416 (relating to the exclusion from strength accounting of personnel of the Navy and Marine Corps detailed outside the Department of Defense on a reimbursable basis) in conformance with other provisions of the bill that require that military personnel detailed outside the Department of Defense be counted in determining authorized strengths.

Amendments relating to number and distribution in grade of flag and general officers (section 313)

Subsection 313(a) of the Act would change the application of section 5441, regarding prescribed numbers and vacancies, to individual grades rather than combination of grades.

Subsection 313(b) of the Act would modify section 5442 such that it would pertain only to flag officers of the Navy. Authority for officers serving in grades of captain, commander and lieutenant commander would be contained in section 523 of title 10, as added by the Act. Therefore, it is necessary to retain section 5442 to provide authority to the Navy for flag officers on active duty in the unrestricted and the restricted line. The section would provide a table relating the total number of line officers on active duty in the grade of ensign and above, excluding officers carried as additional numbers in grade, to the maximum number of commodore admirals and rear admirals of the line that may be authorized. This subsection would retain the requirements for the Secretary of the Navy to compute, at least annually the number of officers authorized under section 5442. Likewise it would enable the Secretary to specify a lesser number of commodore admirals and rear admirals and apply the subsequent reduction as an increase in prescribed numbers of lower grades. Likewise this subsection would require the Secretary to at least once annually specify the number of flag officers designated for engineering duty, aeronautical engineering duty, and special duty. This number would be limited to 13 percent of the number of line commodore admirals and rear admirals not restricted in the performance of their duties. The unrestricted line officer table and 13 percent limitation on restricted line officers would provide the same numerical limitations that exist in current law.

Subsection 313(c) of the Act would modify section 5443, relating to the number of officers of the Marine Corps on active duty such that it pertains only to brigadier generals and major generals. Authority for officers in grades of colonel and below would be contained in section 523 of title 10, as added by the act. Therefore, it is necessary to retain section 5443 to provide authority for Marine Corps generals on active duty. This section would provide a table relating the total number of officers serving on active duty in the grade of second lieutenant and above to the maximum number of brigadier generals and major generals that may be authorized. Inserting "section 523 of this title" in lieu of "subsection c" is necessary to refer to the section under which active duty strengths in grades of colonel, lieutenant colonel and major are computed for the purpose of applying carry-down when the Secretary prescribes a number of general officers less than the table authorizes. This feature is the same as contained in current law.

Subsection 313(d) of the Act would repeal section 5445 which permits the President to suspend provisions of sections 5442, 5443 and 5444 that apply to officers serving in the grades of lieutenant and lieutenant junior grade in the Navy, and captain and first lieutenant in the Marine Corps. Since amended sections 5442, 5443 and 5444 would apply only to flag and general officers, section 5445 would be no longer applicable.

Subsection 313(d) of the Act would also repeal section 5447, 5448 and 5449. Chapter 30 of title 10 would provide for strength and grade distribution of officers on active duty. The permanent officer limitation of current law would no longer be necessary in view of a single active duty list. It is therefore necessary to repeal sections 5447, 5448 and 5449 relating to Navy and Marine Corps officers on the active list in permanent grade.

Subsection 313(e) of the Act would amend section 5457(a) by adding a reference to the grade of commodore admiral and by providing that no more than 50 percent of the reserve flag officers authorized by subsection be appointed as rear admirals.

Repeal of sections relating to lineal lists (section 314)

Section 314 of the Act repeals sections 5504 and 5505 which provide for the maintenance of lineal lists in the Navy and Marine Corps and for adjustment of the lineal list to equalize opportunities for promotion of officers of the Reserve. Under this bill a single active duty list of officers would be required by section 620 of title 10, as added by the Act.

PART C—AMENDMENTS RELATING TO ORIGINAL APPOINTMENTS OF COMMISSIONED OFFICERS IN THE NAVY AND MARINE CORPS

Sections superseded by new chapter 33 (section 321)

Section 321 of the Act would amend chapter 539 of title 10, United States Code, by repealing fourteen sections of this chapter (5571, 5572, 5573a, 5574, 5575, 5576, 5577, 5578, 5578a, 5579, 5580, 5583, 5584, and 5586) relating to the authority for making various original appointments in the Regular Navy and Regular Marine Corps. The authority contained in the sections that would be repealed would now be contained in the new chapter 33 of title 10 consolidating the existing authority into three new sections (§ 542 Original appointments of commissioned officers, § 543 Qualifications for original appointment as a commissioned officer and § 544 Service credit upon original appointment as a commissioned officer). All appointments in the Regular Navy, including designation into various corps, would be made within the new sections added by the Act.

Repeal of appointment authority of graduates of the Naval Academy (section 322)

Section 322 of the Act would repeal section 5573 of title 10, United States Code, which contains the authority to appoint graduates of the Naval Academy as commissioned officers in the Regular Navy or Regular Marine Corps. The repeal of section 5573 would not remove the authority or the intent to commission graduates of the Naval Academy. That authority would be provided for in the chapter 33 of title 10.

Repeal of limit of number of ensigns appointed annually in certain staff corps (section 323)

Subsection 323(a) of the Act would repeal section 5591 of title 10, United States Code, which limits the number of ensigns that can be appointed annually in the Supply Corps of the Regular Navy. The intention is to have all original appointments in the Regular Navy made under the authority of the new chapter 30 and that annual limitations on the numbers of officers appointed into the various staff corps be determined by regulations promulgated by the Secretary of the Navy within the overall authorized strength limitations.

Subsection 323(b) of the Act would repeal section 5592 of title 10, United States Code, which limits the number of ensigns that can be appointed annually in the Civil Engineering Corps of the Regular Navy. The intention is to have all original appointments in the Regular Navy made under the authority of the new chapter 30 and that annual limitations on the number of officers appointed into the various staff corps be determined by regulations promulgated by the Secretary of the Navy, within the overall authorized strength limitations.

Subsection 323(c) of the Act would repeal section 5593 of title 10, United States Code, which limits the number of ensigns that can be appointed annually in the Medical Service Corps of the Regular Navy. The intention is to have all original appointments in the Regular Navy made under the authority of the new chapter 33 and that the annual limitation on the number of officers appointed into the various staff corps be determined by regulations promulgated by the Secretary of the Navy within the overall authorized strength limitations.

Subsection 323(d) of the Act would repeal section 5594 of title 10, United States Code, which limits the number of ensigns that can be appointed annually in the Nurse Corps of the Regular Navy. The intention is to have all appointments in the Regular Navy made under the authority of the new chapter 30 and that the annual limitations on the number of officers appointed into the various staff corps be determined by regulations promulgated by the Secretary of the Navy within the overall authorized strength limitations.

Subsection 323(e) of the Act would repeal the prohibition on former midshipmen at the Naval Academy or former cadets at the U.S. Military Academy being appointed in the Regular Marine Corps prior to the graduation of the class in which he or she was a member.

Original appointment, in the Regular Navy of officers designated for engineering, aeronautical, and special duty (section 324)

Subsection 324(a) of the Act would amend subsection (a) of section 5587 of title 10, United States Code, to delete the reference to male officers and to the fact that appointments will be to the active list substituting therefore the term regular officers. Since all officers above the grade W–4, originally appointed in the Regular Navy, are on the active list as defined by section 101(9) of title 10, United States Code, reference therein to the active list was unnecessary. The language concerning grade in which initially appointed has been deleted, since that authority is now covered in new chapter 33 as added by the Act. Annual limitations on the number of officers appointed for engineering duty, aeronautical engineering duty or special duty would be delineated by regulations promulgated by the Secretary of the Navy within the overall authorized strength limitation.

Subsection 324(b) of the Act would amend subsection 5587(b) of title 10, United States Code, by substituting the words "regular officer" for the words "any officer on the active list". This amendment conforms the language of this section with other sections of title 10.

Subsection 324(c) of the Act would amend subsection 5587(c) of title 10, United States Code, by changing the name of the special duty category "public information" to "public affairs" and by adding two new categories of special duty, "geophysics" and "cryptography", to conform to the existing structure of special duty designations within the Navy.

Subsection 324(d) of the Act would amend subsection 5587(d) by eliminating the authority to consider engineering, aeronautical and special duty officers as additional numbers in grade. Such officers would be included in the strength computations with the unrestricted and restricted officers of the Regular Navy.

Original appointment of regular officers designated for limited duty (section 325)

Subsection 325(1) of the Act would amend subsection (a) of section 5589 of title 10, United States Code, to substitute the term "regular officers" for the term "active list of the Navy" in order to conform with the language used throughout title 10 since all officers in the Regular Navy are on the active list as defined in section 101 of title 10. In addition, this subsection of the Act would amend subsection (a) of section 5589 to allow original appointments in the Navy below the grade of lieutenant commander rather than only in the grade of ensign. This amendment is necessary to provide needed flexibility in appointment authority to reflect the skill and experience levels of the individuals so appointed. Finally, the amendment deletes the reference to males only to allow for appointment of women under this statute.

Subsection 325(2) of the Act would amend subsection (b) of section 5589 of title 10, United States Code, to allow original appointments in the Marine Corps below the grade of major rather than only in the grade of second lieutenant. This amendment is necessary to provide needed flexibility in the appointment authority to reflect the skill and experience levels of the individuals so appointed. This appointment also deletes the reference to males to allow the appointment of women.

Subsection 325(3) of the Act would amend subsection (c) of section 5589 of title 10, United States Code, to reference the qualifications for original appointment found in section 543(a) of title 10, as amended by the Act.

Temporary appointment in warrant officer grades and of officers designated for limited duty (section 326)

Subsection 326(a) of the Act would amend subsection (a) of section 5596 of title 10, United States Code, to authorize the Secretary of the Navy to make temporary appointments in (i) warrant officer grades, and (ii) in grades not above lieutenant in the Regular Navy or captain in the Regular Marine Corps of officers designated for limited duty. This would provide, as amended, authority for temporary appointment, eligibility and numerical limitations to be prescribed by secretarial regulations, of warrant officers and limited duty officers.

Subsection 326(b) of the Act would provide a savings clause that would insure that the permanent, probationary or acting status of individuals receiving temporary appointment under section 5596 of title 10, United States Code, would not be changed, nor would they have any promotion, appointment, right or benefit prejudiced or abridged in their permanent status. Individuals so temporarily appointed shall not suffer any reduction in the pay or allowances to which entitled because of their permanent status at the time of their temporary appointments or any reduction in pay and allowances to which entitled under a prior temporary appointment to a lower grade.

Subsection 326(c) of the Act would enumerate four classes of individuals ineligible for temporary appointment under section 326(a).

Subsection 326(d) of the Act would provide authority for the temporary promotion of officers appointed under section 326.

Subsection 327(e) of the Act would grant the Secretary of the Navy authority to terminate any temporary appointment made under section 326(a).

Repeal of temporary appointment authority for Naval Reserve and Marine Corps Reserve officers (section 327)

Section 327 of the Act would repeal the authority of the President to make temporary appointments in the Naval Reserve and the Marine Corps contained in sections 5597, 5598 and 5599 of title 10, United States Code. Such authority would now rest in the new section 603 of title 10.

Service credit on original appointment as a commissioned officer in the reserves (section 328)

Section 328 of the Act would completely amend section 5600 of title 10, United States Code, as it relates to service credit for individuals receiving original appointments in the Naval Reserve and Marine Corps Reserve.

Subsection (a) of the amended section 5600 would allow the Secretary of Defense to prescribe by regulations the amount of credit that an individual may receive for the purpose of determining his or her grade, seniority in grade and eligibility for promotion based upon his or her prior service as a commissioned officer, above the grade of W-4, in an active status in any armed force of the United States.

The amended section would also set forth the credit that the Secretary of the Navy, under regulations issued by the Secretary of Defense, could grant to individuals, in addition any credit granted to an individual under subsection 5600(a), for advanced training, education and/or experience based upon the following:

(A) Where advanced training is a prerequisite for appointment as a commissioned officer, e.g. Medical Corps, Dental Corps, Chaplain Corps, or Judge Advocate General's Corps, one year of constructive credit would be granted for each year or portion thereof of advanced credit that is above the level of baccalaureate training; however, such constructive credit could not exceed the number of years that are normally required to achieve the advanced degree.

(B) In the health professions, other than medicine or dentistry, credit would be granted for advanced education beyond the baccalaureate level that exceeds the basic education criteria for original appointment and that will be of direct use to the appointing armed service.

(C) Additional credit could be granted of (i) not more than one year for internship or other graduate medical or dental training required by the armed forces and (ii) not more than one year for each additional year of graduate level study creditable for certification in a specialty required by the armed forces.

(D) In unusual cases additional credit could be granted where the individual possesses special experience.

(E) In the health professions, an additional one year of constructive credit would be granted where at least seventy-five percent of the individuals entering the graduate level training have had at least one extra year of preprofessional training unless the majority of the graduate level institutions require this preprofessional training.

The amended section would limit the total amount of credit that could be granted to an individual, except in unusual cases authorized by the Secretary of Defense, to that required to be eligible for an original appointment in the grade of major in the Marine Corps or lieutenant commander in the Navy.

The amended section would make the constructive credit that is granted for advanced education, training and/or experience additional to any credit that might have been granted under subsection 5600(a).

Subsection 5600(c) would prohibit the granting of constructive service credit for additional education obtained while the individual was serving in a commissioned status in which he or she is receiving among other things promotion credit while attending an advanced degree program in order to qualify for appointment or designation in a corps, e.g. the JAG Corps Student Program.

Subsection 5600(d) would allow the Secretary of the Navy to grant additional credit up to that necessary for qualification for appointment as a Judge Advocate as a lieutenant in the Naval Reserve or appointment with a view toward designation as a Judge Advocate as a captain in the Marine Corps Reserve if the Secretary of Defense determines that there is a critical shortage of Judge Advocate in the grades below lieutenant commander or major, respectively.

Repeal of direct procurement of ensigns and second lieutenants (section 329)

Section 329 of the Act would repeal section 6909 of title 10, United States Code, which relates to the authority to appoint directly certain individuals as ensigns in the line, Supply Corps, Civil Engineer Corps and Medical Service Corps of the U.S. Navy and as second lieutenants in the U.S. Marine Corps. The authority to grant original appointments in the above enumerated areas as well as other corps and special duty designations will be contained in the new sections 542, 543 and 544 of title 10 as added by the Act.

PART D—AMENDMENTS RELATING TO PROMOTIONS, SEPARATION, AND INVOLUNTARY RETIREMENT OF COMMISSIONED OFFICERS

Repeal of chapter providing for appointments to fleet commands and other positions of importance and responsibility (section 331)

Section 331 of the Act, would repeal chapter 517 of title 10, United States Code, which provides for the designation by the President of Navy and Marine Corps officers for certain positions and for the concurrent appointment of officers so designated to the grades of admiral, vice admiral, and lieutenant general. The repeal would also eliminate current law in the same chapter that limits the number of admirals and vice admirals who may be appointed following designation by the President for certain positions, and the number of Marine Corps generals and lieutenant generals.

Abolishment for regular officers of Navy running mate system and assignment of running mates to reserve officers (section 332)

Section 332 of the Act would abolish the system of assigning Regular Navy line officers as running mates for Navy staff corps officers which is set forth in chapter 541 of title 10, United States Code. The running mate system is used in determining the eligibility of staff corps officers for promotion under current law. Under the promotion system established under the Act, the running mate system is unnecessary. The section would retain the running mate system as is currently in effect under section 5665 of title 10, United States Code, for Navy and Marine Corps officers in an active status in the reserve who are not on an active-duty list.

Repeal of chapters relating to Navy and Marine Corps selection boards, promotion of officers, and examinations for promotions (section 333)

Section 333 of the Act would repeal chapters 543, relating to selection boards; 545, relating to the promotion of officers, and 547, relating to examinations for the promotion of officers. New selection and promotion procedures would be established by title I of the Act to replace those repealed.

Temporary appointments of certain Navy lieutenants (section 334)

Section 334 of the Act would add a new section to title 10 that would permit the temporary promotion to the grade of lieutenant commander of a Navy line lieutenant who: (1) has a skill in which the Navy has a critical shortage of personnel; and (2) is serving in a position that is designated to be held by a lieutenant commander and requires that an officer serving in such position have the skill possessed by such officer. Promotion under this new section would be made pursuant to regulations of the Secretary of the Navy. Appointments under this new section would be made by the President alone. An appointment under this new section would not change the position on the active-duty list of an officer appointed, nor would it prejudice the officer in regard to other promotions or appointments. Such an appointment would not change the permanent, probationary or acting status of the appointee nor would it abridge his rights or benefits. Promotions under this new section would be made upon the recommendation of a board of officers convened for the purpose of recommending such promotions. Unless expressly declined, an appointment under this section would be effective when made and pay and allowances of the grade of lieutenant commander are due from that date. A lieutenant commander promoted pursuant to this section would be counted as such in determining the authorized strengths for officers established under section 453 of title 10, United States Code, as added by the Act.

It is the intent of the Committee that the promotions provided for under this section provide incentives for those officers below the grade of lieutenant commander who are particularly skilled in the engineering fields vital to the Navy by providing early promotion to lieutenant commander with concurrent increases in pay and allowances.

Repeal of sections relating to involuntary retirement, separation, and furlough (section 335)

Section 335 of the Act would repeal specified sections of chapter 573 of title 10, United States Code, which provide for involuntary retirement, separation, and furlough of officers of the Navy and Marine Corps for reasons of length of service, age, and failure of selection for promotion. The provisions repealed under this section would be covered by other sections added by title I of the Act.

Retirement or discharge of regular limited duty officers (section 336)

Section 336 of the Act would amend section 6383 of title 10, United States Code, which provides for the retirement of limited duty officers of the Regular Navy and Marine Corps upon the completion of 30 years of active service, and for the retirement or discharge of such officers upon their second failure of selection for promotion. Some amendments would merely change the wording of the section to conform to other changes that would be made by the Act. In addition, this section would authorize continuation on active duty under section 637 of title 10, United States Code, as added by the Act, of a lieutenant commander or major who had twice failed of selection, as an alternative to mandatory retirement. This section would establish a provision for the mandatory honorable discharge of a limited duty ensign or second lieutenant who had failed twice of selection for promotion and would therefore make such officers eligible for separation pay provided all other conditions of eligibility were met. Section 6383 currently does not provide for involuntary separation of limited duty officers in those grades.

This section of the Act would remove the option now available to a limited duty lieutenant commander or major of reverting to a previously held permanent warrant grade or to the grade of W-1 upon the second failure of selection for promotion to commander or lieutenant colonel.

This section of the Act would direct a retirement or discharge required by failure of selection for promotion to be effected no later than six months after the month in which the officer was found not qualified for promotion. Current law requires such separation to be effected no later than June 30 of the fiscal year in which the second failure of selection occurred.

Elimination of reserve officers from active status (section 337)

Section 337 of the Act would amend section 6389 of title 10, United States Code, which provides for the elimination from active status of reserve officers of the Navy and Marine Corps in the grades of lieutenant (junior grade) and first lieutenant through captain (Navy) and colonel who have twice failed of selection for promotion to conform the wording of the section to other changes that would be made by the Act.

This section would add a provision mandating the elimination from active status of an officer of the Naval Reserve: (1) who holds the permanent grade of commodore admiral who has 30 years of total commissioned service and has held the grade of commodore admiral for five years unless such officer has been recommended for promotion to rear admiral; or (2) who holds the permanent grade of rear admiral and has 30 years of total commissioned service and has held the grade of rear admiral for five years. These periods of service and lengths of time in grade are the same as those that would be prescribed for regular officers of equal grade under the Act.

Elimination from active status in the Naval Reserve of officers in the Nurse Corps (section 338)

Section 338 of the Act would amend 6397 of title 10, United States Code, which provides for the elimination from active status of Reserve officers of the Navy Nurse Corps to provide for the elimination of those Reserve officers under the conditions prescribed in the Act for the separation from the active-duty list of a regular officer in the same grade.

This section anticipates the institution of a Nurse Corps by the Secretary of the Navy after the effective date of the Act. That Corps is among the staff corps that would be eliminated under the provisions of sections 351 and 352 of the Act.

PART E—AMENDMENTS RELATING TO SPECIFIC POSITIONS

Rank and privileges of retirement of the Director of the Office of Budget and Reports (section 341)

Section 341 of the Act would eliminate the entitlement of the Director of the Office of Budget and Reports to the grade of rear admiral thereby permitting the appointment of the Director to the grade of commodore admiral that would be created under section 301 of the Act.

Grade of the Chief of Dental Division, Bureau of Medicine and Surgery (section 342)

Section 342 of the Act would permit the detail of a commodore admiral as Chief of the Dental Division of the Bureau of Medicine and Surgery. Current law requires the detail of a rear admiral to that position.

Rank and grade of Judge Advocate General of the Navy (section 343)

Section 343 of the Act would authorize the Judge Advocate General of the Navy to hold the rank and grade of rear admiral or major general.

Abolishment of positions of Assistant to the Chief of Naval Personnel for Women and Director of Women Marines (section 344)

Section 344 of the Act would abolish the positions of Assistant to the Chief of Naval Personnel for Women and Director of Women Marines by repealing sections 5143 and 5206 of title 10, United States Code, respectively. Such positions would not be required after the integration of women officers with their male counterpart is effected under the Act.

PART F—ABOLISHMENT OF CERTAIN NAVY STAFF CORPS; AUTHORITY TO ESTABLISH NEW STAFF CORPS IN THE NAVY

Authority to establish new staff corps in the Navy (section 351)

Section 351 of the Act would authorize four staff corps for the Navy: the Medical Corps, the Dental Corps, the Judge Advocate General Corps, and the Chaplain Corps. This section would authorize the Secretary of the Navy to establish other staff corps and to provide for the appointments of the Chiefs of those corps.

The intent of the Committee is to have uniformity among the services with respect to corps established under law while giving the Navy the authority to create such additional corps as are considered necessary for administration and accomplishment of the functions performed by the specialists comprising the existing staff corps.

Abolishment of Medical Service Corps and Nurse Corps (section 352)

Section 352 of the Act would repeal sections 5139, 5140 and 6028 of title 10, United States Code, which establish the positions of Chief of the Medical Service Corps, Director of the Nurse Corps, and set forth the composition of the Medical Service Corps. Such repeals are consistent with the reduction of staff corps under law to the four corps named in section 351 of the Act.

Composition of Medical Department of the Navy (section 353)

Section 353 of this Act would eliminate from section 6027 of title 10, United States Code, which establishes the composition of the Medical Department of the Navy, explicit reference to the Medical Service Corps, the Nurse Corps and the Hospital Corps. This section would retain the Medical Corps and the Dental Corps as explicit components of that Department and would provide for the inclusion of such other corps as the Secretary of the Navy may establish and designate.

PART G—AMENDMENTS RELATING TO RETIRED OFFICERS

Right of retired officers to command (section 361)

Subsection 361(a) of the Act would repeal the direction that retired officers of the Navy be withdrawn from command. Such direction is set forth in section 5955 of title 10, United States Code, which would be repealed in its entirety by this subsection.

Subsection 361(b) of the Act would repeal the authority of the President to detail retired Navy officers to command of squadrons and single ships in time of war. Such authority is set forth in section 5982 of title 10, United States Code, which would be repealed in its entirety by this subsection.

The intent of the committee is to consolidate authority to order retired regular members of all the services under section 688 of title 10, United States Code, as added by section 106 of the Act which would authorize the Secretary of each military department, under regulations of the Secretary of Defense, to order a retired regular member of the appropriate service to active duty at any time.

Recall and retired pay of retired officers of the Regular Navy and Regular Marine Corps (section 362)

Subsection 362(a) of the Act would repeal the authority of the Secretary of the Navy to order any retired officer of the Regular Navy or Regular Marine Corps to active duty in time of war or national emergency declared by the President. Such authority is set forth in section 6481 of title 10, United States Code, which would be repealed in its entirety by this subsection.

Subsection 362(b) of the Act would repeal section 6487 of title 10, United States Code, which establishes the rate of retired pay for a retired rear admiral of the lower half following the recall to active duty of such an officer in time of war or national emergency.

The intent of the committee is to eliminate a section of title 10, United States Code, that would be superfluous after the enactment of the Act. Section 5597 of title 10, United States Code, which provides for temporary appointments in the Navy and Marine Corps in time of war or national emergency and section 5787 which provides for temporary promotions in those services in such times would both be repealed by this Act. All appointments and promotions of officers would be made in accordance with chapters 35 and 36 of title 10, United States Code, as added by section 105 of the Act.

The intent of the committee in recommending subsections 362(a) and 362(b) is to consolidate the authority governing the recall of retired regular members of all the services under section 688 of title 10, United States Code, as added by section 106 of this Act which would authorize the Secretary of each military department, under regulations of the Secretary of Defense, to order a retired regular member of the appropriate service to active duty at any time.

Subsection 362(c) of the Act would repeal section 6488 of title 10, United States Code, which provides for the retention upon release from active duty of the highest grade held by a regular or reserve officer of the Navy or Marine Corps under a temporary appointment or promotion made by the President during time of war or national emergency.

Grade of retired members when ordered to active duty (section 363)

Section 363 of the Act would amend section 6483 of title 10, United States Code, to repeal the direction that each retired member of the naval service, when recalled to active duty, shall be recalled in his grade on the retired list. The subsection repealed would be unnecessary after the enactment of the Act which establishes a single authority for the recall or retired members of all services. Such authority would be set forth in section 688 of title 10, United States Code, as added by section 106 of the Act.

Section 363 would continue in effect the provision of subsection 6483(b) of title 10, United States Code, which establishes the grade at which officers advanced on the retired list to flag or general rank for distinguished combat service before 1 January 1947.

PART II—MISCELLANEOUS AMENDMENTS

Definitions (section 371)

Section 371 of the Act would delete the definitions of the terms "active-duty list of the Navy," and "active-duty list of the Marine Corps" from subtitle C of title 10, United States Code. The new term "active-duty list" which applies to the Army, Navy, Air Force and Marine Corps would be defined in subsection 101(37) of the Act.

Repeal of limitation on assignment of Regular Navy officers to shore duty (section 372)

Section 372 of the Act would repeal the restriction on the assignment to shore duty of a Regular Navy officer other than an officer in the Nurse Corps or a regular woman officer except in cases when the duty is specifically provided by law, or in which the Secretary of the Navy determines that such assignment is in the public interest.

Repeal of provisions resulting in different treatment of women members of the Navy and Marine Corps (section 373)

Section 373 of the Act would repeal or amend provisions of current law that treat women Navy and Marine Corps officers and enlisted members differently than their male counterparts in the administration of the officer corps.

Subsection 373(a) of the Act would repeal clauses of current law that exclude regular women Navy officers from provisions establishing the number of officers permitted in the grades of lieutenant commander and above. The distribution in grade of all Regular Navy officers would be established under chapter 30 of title 10, United States Code, as added by section 103 of the Act.

Subsection 373(b) of the Act would repeal current law that directs the Secretary of the Navy to prescribe the number of women line officers in the Navy and Marine Corps above the grade of lieutenant (junior grade) or first lieutenant. That provision would be unnecessary after the enactment of the Act.

Subsection 373(c) of the Act would repeal the provision of current law that authorizes the appointment of women in the Naval Reserve in the Medical Corps, the Judge Advocate General's Corps, the Dental Corps, and the Medical Service Corps. Under the Act, women and men would be appointed to those corps under the same provisions of law.

Subsection 373(d) of the Act would remove from current law all language limiting to male officers the ability to transfer from a Staff Corps to the line of the Navy or from the line to a Staff Corps.

Subsection 373(e) of the Act would repeal section 5590 of title 10, United States Code, which provides for the original appointments of women officers in the Regular Navy and Regular Marine Corps. That section would be unnecessary after the enactment of the Act.

Subsection 373(f) of the Act would remove from current law all language limiting entrance to the aviation cadet program to male enlisted members and male citizens.

Subsection 373(g) of the Act would repeal the provision of current law under which the Secretary of the Navy may terminate the enlistment of and discharge any enlisted woman in the Regular Navy or Regular Marine Corps. There is no paralled provision for enlisted men.

Subsection 373(h) of the Act would repeal the provision of current law under which the Secretary of the Navy may terminate the appointment of any woman officer in the Regular Navy or Regular Marine Corps. There is no paralled provision for male officers.

Repeal of authorization for appointment of reserve naval aviators as regular officers (section 374)

Section 374 of the Act would repeal section 6914 of title 10, United States Code, which authorizes the appointment in the Regular Navy and Regular Marine Corps of commissioned naval aviators of the Naval Reserve and Marine Corps Reserve.

TITLE IV—AMENDMENTS TO TITLE 37, UNITED STATES CODE: PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

PART A—PAY FOR OFFICERS OF THE ARMED SERVICES

Repeal of assignment of certain officers in the Navy and Coast Guard to the pay grade for rear admirals (section 401)

Section 401 of the Act would amend section 202 of title 37, United States Code, relating to the assignment of officers of the Navy and Coast Guard holding certain positions to the pay grade of rear admiral of the upper half, by repealing subsections (a) through (d) and subsections (g) through (l). These provisions provide certain procedures involving the pay determination of admirals of the lower half who become eligible for the pay of an admiral of the upper half. The repealed provisions become unnecessary because of the new commodore admiral (O–7) pay grade created by the Act.

Computation of creditable service (section 402)

Section 402(a) of the Act would amend subsection 205(a) of title 37, United States Code, relating to the computation of service creditable for basic pay as follows:

Clauses (1), (2), and (3) would amend subsection 205(a), by striking out the words "subsections (b)–(d)" and inserting "subsections (b)–(e)" in place thereof; by inserting "and" at the end of clause (6) and by striking out clauses (7) and (8) and redesignating clause (9) as clause (7). These changes are necessary to conform with new constructive service credit provisions in the Act that bar the use of such credit in the computation of retired pay. Current provisions in Title 37 permit physicians and dentists to include four or five years of constructive credit received for advanced professional education in retired pay computation.

Clauses (4) and (5) would amend subsection 205(a) by striking out "section 1402(b)–(d) and section 1402a(a)–(d)" in the second sentence and inserting in place thereof "subsections (b), (c), and (d) of section 1402 and subsections (b), (c) and (d) of section 1402a", and by striking out "clauses (2)–(9)" in the second sentence and inserting in place thereof "clauses (2) through (7)."

Section 402(b) of the Act would amend subsection 205(b) by striking out the second sentence to conform with previous changes.

Section 402(c) of the Act would repeal subsection 205(c) to conform with previous changes and subsection (d) and (e) of section 205 are redesignated as subsections (c) and (d) respectively.

Effective date for pay and allowances of commissioned officers receiving promotions (section 403)

Section 403(a) of the Act would repeal sections 904 and 905 of title 37, United States Code, relating to the effective date of pay and allowances for Marine Corps and Navy officers. This will end the current Navy and Marine Corps practice that allows the pay of officers to be "backdated" to the effective date of promotion. New provisions in the

Act provide that all officers of the military services become entitled to pay and allowances of the grade the officer is promoted to on the actual effective date of the promotion.

Section 403(b) of the Act would amend chapter 19 of title 37, United States Code, relating to administration of pay and allowances by adding a new section 1010 as follows:

Section 1010 would provide that an officer of a uniformed service who is promoted above the grade of second lieutenant or ensign is entitled to the pay and allowances of the grade he is promoted to on the effective date of promotion.

PART B—MISCELLANEOUS AMENDMENTS RELATING TO PAY AND ALLOWANCES

Certain Travel (section 411)

Section 411(a) of the Act would amend subsection 402(b) of title 37, United States Code, to permit an enlisted member the basic allowance for subsistence while on authorized leave, confined in a hospital or *while performing travel under orders away from his designated post of duty.* The allowance would be denied by the Secretary concerned if the member is subsisting in kind while on field or sea duty.

Section 411(b) of the Act would amend section 402(e) of title 37, United States Code, by inserting "including definitions of the terms 'field duty' and 'sea duty' for purposes of the third sentence of subsection (b) of this section" after "of this section".

Elimination of differences of treatment in provision of initial uniform allowance to officers (section 412)

Section 412 of the Act would amend section 415 of title 37, United States Code, to delete provisions that discriminate in the reimbursement of the initial clothing allowance between certain officers (regular and reserve) in the military services.

Reimbursement of Expenses in Connection with Certain Mess Operations (section 413)

Section 413 of the Act would amend chapter 19 of title 37, United States Code, by inserting after new section 1010 the following new section:

Section 1011 would in subsection (a) provide for the establishment, under Secretarial directive, of a rate structure for meals sold to officers, civilians or enlisted members entitled to allowances determined under section 404(d)(2) of title 10 and in subsection (b) provide for the payment for such meals. Subsection (b) would also provide for the messing of members of organized nonprofit youth groups sponsored at either the national or local level at reduced rates.

Repeal of provisions of title 37, United States Code, superseded by section 805 of the Mental Health Systems Act (section 414)

Section 414(a) of the Act would repeal sections 302(e) and 313 of title 37, United States Code. These sections relate to special pay for physicians and dentists.

Section 414(b) would amend section 311(a) of title 37, United States Code by striking out paragraph (2) relating to the initial active duty obligation of physicians and dentists, and redesignate paragraph (3) as paragraph (2). The heading of the section is changed to conform with the previous changes.

These changes are required in order to prevent duplication of benefits that could result from two separate legislative actions that were developed simultaneously by different Congressional committees with overlapping jurisdiction.

Special pay for reserve medical officers (section 415)

Section 415 of the Act would authorize reserve medical officers who have served on active duty as medical officers for at least one year to receive special monthly pay of $100 per month if they have served for less than two years and of $350 per month if they have served for two or more years. This payment would be made on a pro rata basis during their two-week summer training each year.

TITLE V—TECHNICAL AND CLERICAL AMENDMENTS

PART A—AMENDMENTS REQUIRED BY THIS ACT

Amendments to subtitle A of title 10, United States Code

Section 501 of the Act would amend subtitle A of title 10 as follows:

Subsection (1) would amend the table of chapters at the beginning of subtitle A and the table of chapters at the beginning of Part II of each subtitle. The six clauses (A) through (F) each reflect the action necessary to indicate the introduction of a new section into subtitle A and other changes relating primarily to form caused by the new provisions of this act.

Subsection (2) would amend Section 101 to delete the phrase "duty on the active list" from paragraph (22). The change is required because this act would abolish the active lists.

Subsection (3) would amend current section 123(a) by striking out "3571", "5867" and "8571". Sections 3571, 5867 and 8571 would be repealed by the act.

Subsection (4) would amend section 266(a) to include a reference to proposed new section 612(a)(3) which would generally require selection boards that consider reserve officers of a military service to include a reserve officer of that military service on the board.

Subsection (5) would amend section 280 to substitute chapter 34 for chapter 35 in the two references thereto. This is necessary because of the redesignation of the old chapter 35 as chapter 34. The power involved is the authority to promulgate regulations.

Subsection (6) would amend section 564(a)(3) to embody the new section 1174 regarding separation pay.

Subsection (7) would amend section 593(a) to reflect the impact of new section 624, which provides that a reserve officer on active duty who is promoted is also promoted in the reserve grade.

Subsection (8) would amend the table of sections at the beginning of chapter 39 by inserting new items for the new sections 688 and 689 and by striking out the line for current section 687, which would be repealed.

Subsection (9) would amend chapter 41 by adding a new section 720 which relates to the appointment of a general or a flag officer as Chief of Staff to the President.

Subsection (10) would amend the table of sections at the beginning of chapter 43 to reflect the proposed repeal of current section 741, the substitution of a new section 741, and the addition of a proposed section 750.

Subsection (11) would amend section 743 to reflect the substitution of the term "active-duty list" for the term "active list".

Subsection (12) would amend the table of sections relating to section 973 in order to reflect the proposed expanded scope of that provision.

Subsection (13) would amend references in current section 1079 to current section 1072, relating to the definition of "dependent" to reflect amendments to section 1072 proposed by the Act.

Subsection (14) would amend current section 1086(c) to conform the references to section 1072 with the amendments made to section 1072 by the Act.

Subsection (15) would amend the table of sections at the beginning of chapter 59 to reflect the repeal of current section 1167 and the addition of proposed new section 1174.

Subsection (16) would amend clause (1) of current section 1208(a) to reflect the proposed abolishment of active lists by the Act.

Subsection (17) would amend section 1211(a) to reflect the proposed abolishment of active lists by the Act.

Subsection (18) would amend the table of sections at the beginning of chapter 63 to reflect the proposed new section 1251.

Subsection (19) would amend the heading of chapter 65 to reflect the reality that it applies solely to the retirement of warrant officers.

Subsection (20) would amend the table of sections at the beginning of chapter 69 to reflect the addition of new section 1371.

Subsection (21) would strike a reference in current section 2126 to proposed sections 205(a)(7) and 205(a)(8) of title 37 to reflect the proposed repeal of these provisions by the Act.

Subsection (22) would amend section 2126(2) to correct reference.

Amendments to subtitle B of title 10, United States Code (section 502)

Section 502 would amend subtitle B, relating to the Army as follows:

Clause (1) would amend the table of chapters at the beginning of subtitle B and the table of chapters at the beginning of part II of such subtitle by deleting references to Chapters 359 (Separations from Regular Army for Substandard Performance of Duty), 360 (Separation from Regular Army for Moral or Professional Dereliction or in the Interests of National Security) and 365 (Retirement for Age). The provisions of these chapters would be established uniformly for all the services. Such provisions would be reflected in amendments made by this Act to title I, General Military Law, and would not be included in subtitle B.

Clause (2) would amend Section 3034(b) (Chief of Staff: appointment; duties) to reflect the proposed repeal of the current section 3066 (Generals and Lieutenant Generals).

Clause (3) would amend Chapter 307 by striking out from the table of sections references to section 3066 (Generals and Lieutenant Generals) to reflect the repeal of that section by the Act.

Clause (4)(a) would amend Chapter 331 (Strength) by changing section 3202 in the table of sections to reflect that section's relations to general officer strength in grade as described in the proposed bill.

Clause (4)(b) would amend Chapter 331 (Strength) by changing section 3212 to reflect that section's relation to the Army Reserve as described in the proposed bill.

Clause (4)(c) would amend Chapter 331 (Strength) to reflect the repeal of the following sections in order to conform to the general purposes of the bill:

Sections 3201 and 3203 (relating to the total strength of the Army in members on active duty) since that strength is currently authorized annually by Congress.

Sections 3204, 3205, 3206, 3207, 3209, and 3213 (relating to authorized strength of various categories of Regular Army officers) since proposed Title I would establish an authorized total commissioned officer strength for the Regular Army and would authorize the Secretary of the Army to prescribe the strength of any category of officers serving on active duty.

Section 3211 (relating to Regular Army strengths in grade) since regular grades would not be controlled.

Sections 3214 and 3216 (relating to Regular Army enlisted members on active duty) since total active duty strengths are authorized annually by Congress.

Section 3230 (relating to Army members detailed for duties outside the Department of Defense) since such members would be counted in computing strengths under the provisions of the Act.

Clause (5)(a) would amend section 3210 to reflect the substitution of the term "active-duty list" for the term "active list."

Clause (5)(b) would amend section 3210 to delete the requirement that no more than one-half of the authorized number of regular Army general officers authorized may be in a regular grade above brigadier general. New requirements would be reflected in section 525 of this Act.

Clause (5)(c) would amend section 3210 to permit the appointment of Regular Army general officers in any of the existing branches of the Army Medical Department or in any branch of the Army Medical Department which may be created by the Secretary of the Army under § 3064 as amended by this Act.

Clause (5)(d) would amend section 3210 by striking out subsections (d) and (e). This would require any general officer on the active-duty list of the Regular Army who is specifically authorized by law to hold any civil office under the United States or any instrumentality thereof to be counted in determining authorized strengths under this section. It would also eliminate the specific authorization for a Regular component general officer in the Medical Service Corps. This would be no longer needed because of the effect of clause (5)(c).

Clause (6)(a) would amend section 3212 (relating to temporary increases in grade strengths) to conform with other provisions of the Act that would repeal limits on regular officer grades.

Clause (6)(b) would amend section 3212 (relating to temporary increases in grade strengths) so that the heading of that section would reflect the deletion of reference to the Regular Army.

Clause (7) would amend current sections 3222 and 3225 (relating to the authorized strength of the Army Reserve, the Army National Guard, and the Army National Guard of the United States) to delete reference to a regular enlisted strength authorization contained in current section 3201(a) which would be repealed by the Act.

Clause (8) would delete the following sections from the table of sections at the beginning of chapter 335 as they would be repealed by section 204, subtitle B of the Act:

Sections 3284, 3285, 3286, 3287, 3288, 3289, 3290, 3291, 3292, 3293, and 3294 (relating to the appointment and qualifications of commissioned officers in the Regular Army) since uniform qualifications and methods for appointing regular officers of a military service would be established.

Sections 3295 and 3296 (relating to promotion lists and placement on promotion lists) to reflect the establishment of active-duty lists for each military service and the abolishmnet of separate promotion lists for regular officers as provided for in the Act.

Sections 3297, 3298, 3299, 3300, 3302, 3303, 3305, 3306, 3307, 3308, 3309, 312, and 3314 (relating to promotion eligibility, effect of failure of promotion, selection procedures, removal of selected officers from a promotion list, and promotion of officers of the Regular Army) since the Act would establish uniform laws that would supersede these sections.

Section 3313 (relating to suspension of laws for promotion, mandatory retirement, or separation during a war or emergency) since the Act would provide suspension authority applicable to laws regulating the management of commissioned officers of the Army, Navy, Air Force, and Marine Corps.

Clause (9) would amend the table of sections at the beginning of chapter 337 (Appointments as Reserve Officers) to reflect the amendment of section 3353 regarding service credit upon original appointment as proposed by the Act and the inclusion of the proposed new section 3396 regarding the exclusion of reserve officers on the active-duty list from the operation of certain sections of chapter 337.

Clause (10) would amend 3360(b) to reflect the deletion of references to the term "active list," as would be provided by the Act.

Clause (11) would amend the table of sections at the beginning of chapter 339 (Temporary Appointments) by deleting the following sections to reflect the repeal of those sections by section 207, subtitle B of the Act:

Sections 3441 (relating to the appointment of officers in the Army without specification of Component) since the Act would authorize temporary appointments of commissioned or warrant officers without specification of component only in time of war or national emergency declared after the effective date of the Act.

Sections 3442 and 3452 (relating to the appointment and promotion of regular and reserve officers to temporary grades higher than their present grades) since the Act would abolish the dual promotion system except in time of war or national emergency.

Sections 3444 and 3445 (relating to the temporary appointment of officers during a war or emergency) would be superseded by a new section 603.

Section 3447 (relating to the method of making and terminating temporary appointments) would be superseded by a new section 603.

Sections 3448 and 3449 (relating to warrant officers) would be superseded by section 603.

Section 3451 (providing a method for acceptance of a temporary appointment) would be superseded by a new section 603.

Clause (12) would amend the table of sections at the beginning of chapter 341 (Active Duty) by deleting the items relating to sections 3494 (relating to grades in which officers are ordered to active duty) and 3504 (relating to the recall of retired members to active duty). These sections would be repealed by subtitle B sections 209 and 210 of the Act.

Clause (13) would amend the table of sections at the beginning of chapter 343 (Special Appointments, Assignments, Details and Duties) by deleting references to sections 3531 (relating to Chief of Staff to the President), 3532 (relating to Assistant to Comptroller of Department of Defense) and 3535 (Assistant to Chief of Engineers). These sections would be repealed by sections 233, 234, and 235 of subtitle B of the Act.

Clause (14) would amend the table of sections at the beginning of chapter 345 (Rank and Counsel) by deleting sections 3571, 3573, and 3574 (relating to the rank of commissioned officers on active duty) and section 3582 (relating to the right of a retired Army officer to command). These sections would be repealed by amendments to subtitle B of the Act. The respective provisions would be carried forth in amendments to title I made by the Act.

Clause (15) would amend the table of sections at the beginning of chapter 361 (Separations for Various Reasons) to reflect the repeal of sections 3814 (relating to the discharge of regular commissioned officers during the three-year probationary period) and 3818 (relating to the termination of appointment of female members) by deleting those sections from the table.

Clause (16) would amend the table of sections at the beginning of chapter 367 (Retirement for Length of Service) to reflect the repeal of sections 3913 (relating to deferred officers not recommended for promotion), 3916 (relating to promotion list lieutenant colonels), 3919 (relating to excessive number of regular commissioned officers), 3921 (relating to regular major generals), 3923, and 3927 (relating to computation of years of service for mandatory retirement of regular commissioned officers) by deleting references to those sections from the table of sections. The respective provisions for those sections would be carried forth in amendments to title I made by the Act.

Clause (17) would amend section 3924(a) (relating to Army officers with forty or more years of service) by substituting "1187" for "3786." The proposed new section 1187 would carry forward the substance of the current section 3786 which would be repealed.

Clause (18) would amend section 3961 (relating to regular or reserve grade upon retirement) to conform to a proposed new section 1370, which would prescribe the retired grade of commissioned officers under certain conditions.

Clause (19) would amend section 3962 (relating to higher grade for service in special positions for regular commissioned officers) to reflect repeal of current section 3066 (relating to generals and lieutenant generals).

Clause (20) would amend section 3963 (relating to higher grade for service during certain periods) by striking out subsection (a) and the subsection designation "(b)" at the beginning of subsection (b). Section 3963(a) currently authorizes regular and reserve officers of the Army to retire in a temporary grade higher than their permanent grade if they have served satisfactorily in that grade for six months or more. The proposed section 1370 requires three years of satisfactory service for voluntary retirement eligibility in a grade above major or lieutenant commander and below lieutenant general or vice admiral. Six months satisfactory service in a grade would be required to retire in that grade involuntarily or for voluntary retirement in a grade below lieutenant colonel. Retirement in a grade above major general would require appointment to that grade by the President, by and with the advice and consent of the Senate; no specified period of service-in-grade would be required for officers in that category.

Clause (21) would amend the table in section 3991 (relating to the computation of retired pay) to conform to the deletion of sections to which current "formula A" applies and that would be deleted by amendments of the Act.

Clause (22) would amend section 3991 (relating to the computation of retired pay) to conform to amendments that would be made by section 218 of subtitle B of the Act.

Clause (23) would amend section 4301 (relating to Army members detailed as students) to reflect amendments by the Act that would establish the term "active-duty list."

(Clause (24) would amend section 4333 (relating to the Superintendent and faculty of the United States Military Academy) to reflect the context of the Act.

Clause (25) would amend section 4336 (relating to permanent professors of the United States Military Academy; registrar) to reflect amendments made by the Act that would establish the terms "regular officer" and "active-duty list."

Clause (26) would amend section 4353 (relating to the commissioning of cadets upon graduation from the United States Military Academy) to provide that original appointment would be made under the new section 531 as added by the Act.

Amendments to subtitle C of title 10, United States Code (section 503)

Section 503 would add or delete words to sections of subtitle C of title 10, United States Code, relating to the Navy and Marine Corps, as required to conform such sections to wording changes, that would be made by this Act. This section would also delete from the tables within subtitle C those items relating to chapters and sections that would be deleted by this Act, and would add items referring to chapters and sections created by this Act.

Subsection (1). This subsection would amend the table of chapters at the beginning of subtitle C. The item relating to chapter 517, "Fleet Commands and Other High Positions," would be struck. That chapter is repealed by section 331 of this Act. The item relating to chapter 531, "Strength," would be changed to read "Strength of Naval Reserve and Marine Corps Reserve," in accordance with section 311 of this Act. Items relating to chapter 541, "Running Mates," chapter 543, "Selection Boards," chapter 545, "Promotions," and chapter 547, "Examinations for Promotion," would be stricken in accordance with sections 332 and 333 of this Act. Provisions covering the matter of those chapters would be added by chapter 36 of title 10, United States Code, as added by section 105 of this Act. The following items would be inserted in lieu of the items deleted: chapter 541 "Running Mates for Reserve Officers," in accordance with section 332 of this Act, and chapter 544, "Temporary Appointments," in accordance with section 334 of this Act.

Subsection (2). This subsection would strike from the table of chapters at the beginning of Part I of subtitle C the item relating to chapter 517 as described in subsection (1).

Subsection (3). This subsection would amend section 5064 of title 10, United States Code, relating to the Director of the Office of Budget and Reports, and 5081 of title 10, United States Code, relating to the Chief of Naval Operations to reflect the replacement of the "active list" by the "active-duty list" as such term is defined in section 101 of this Act.

Subsection (4). This subsection would amend section 5085 of title 10, United States Code, relating to the Vice Chief of Naval Operations to reflect the change to an active-duty list. This subsection would also repeal subsection 5085(d) relating to the designation of the Vice Chief of Naval Operations to duties defined under chapter 517 which would be repealed by this Act.

Subsection (5). This subsection would amend section 5086 of title 10, United States Code, relating to Deputy Chief of Naval Operations to reflect the change to an active-duty list. This subsection would also repeal subsection 5086(c) relating to the designation of any Deputy Chief of Naval Operations to duties defined under chapter 517 which would be repealed by this Act.

Subsection (6). This subsection would amend section 5087 of title 10, United States Code, relating to Assistant Chiefs of Naval Operations to reflect the change to an active-duty list.

Subsection (7). This subsection would amend section 5088 of title 10, United States Code, relating to the Naval Inspector General to reflect the change to an active-duty list. This subsection would also repeal subsection 5088(d) relating to the designation of the Naval Inspector General to duties defined under chapter 517 which would be repealed by this Act.

Subsection (8). This subsection would strike from the table of sections at the beginning of chapter 513 of title 10, United States Code, the items relating to section 5139, "Bureau of Medicine and Surgery: Medical Service Corps, Chief," section 5140, "Bureau of Medicine and Surgery: Nurse Corps, Director," and section 5143, "Bureau of Naval Personnel: Assistant Chief for Women." The Medical Service Corps and Nurse Corps are abolished under section 352 of this Act. The position of Assistant Chief of Naval Personnel for Women is abolished under section 343 of this Act.

This subsection would add to the table of sections under chapter 513 "5155. Staff Corps of the Navy." That section is added by section 351 of this Act.

Subsection (9). This subsection would amend subsection 5133(b) of title 10, United States Code, relating to Bureau Chiefs and the Judge Advocate General of the Navy to reflect the change under this Act, to the grades of commodore admiral and rear admiral from rear admiral upper half and lower half, and to the replacement of the active list by the active-duty list.

Subsection (10). This subsection would amend section 5137 of title 10, United States Code, relating to the Chief and Deputy Chief of the Bureau of Medicine and Surgery to reflect the change to an active-duty list.

Subsection (11). This subsection would amend section 5141 of title 10, United States Code, relating to the Chief and Deputy Chief of Naval Personnel to reflect the change to an active-duty list.

Subsection (12). This subsection would amend section 5150 of title 10, United States Code, relating to the Chief and the Assistant Chief of Naval Research to reflect the change to the active-duty list.

Subsection (13). This subsection would amend section 5149 of title 10, United States Code, to establish the grade of a Navy judge advocate who is detailed as Deputy Judge Advocate General of the Navy at rear admiral and to establish the grade of the Assistant Judge Advocate General of the Navy at commodore admiral.

Subsection (14). This subsection would strike from the table of section of chapter 515 of title 10, United States Code, the item referring to section [illegible]06 relating to the Director of Women Marines. That section would be repealed by section 343 of this Act.

Subsection (15). This subsection would amend section 5201 and section 5202 of title 10, United States Code, relating to the Commandant and Assistant Commandant of the Marine Corps, respectively, to reflect the change to the active-duty list.

Subsection (16). This subsection would strike from the table of chapters at the beginning of part II of subtitle C of title 10, United States Code the items relating to chapters 531, 541, 543, 545 and 547 as described in subsection (1) and by inserting therein "541. Running Mates for Reserve Officers." and "544. Temporary Appointments."

Subsection (17). This subsection would strike from the table of sections of the beginning of chapter 531 the items relating to the following sections: (1) 5401 "Regular Navy: enlisted members." (2) 5402 "Regular Marine Corps: total: enlisted members." (3) 5403 "Navy: line officers on the active list." (4) 5404 "Navy: staff corps officers on the active list." (5) 5405 "Marine Corps officers on the active list." (6) 5406 "Navy officers designated for engineering duty." (7) 5407 "Navy: officers designated for aeronautical engineering duty." (8) 5408 "Navy: officers designated for special duty." (9) 5409 "Navy and Marine Corps officers designated for limited duty." (10) 5412 "Regular Navy Hospital Corps." (11) 5415 "Enlisted members serving as midshipmen or cadets excluded." (12) 5416 "Personnel detailed outside Department of Defense." and (13) 5417 "Estimate of future regular commissioned officer strength."

Subsection (18). This subsection would insert in the table of sections at the beginning of chapter 533 of title 10, United States Code, the following items in lieu of the items of the same number as are now in the table: (1) 5442 "Navy: line officers on active duty: commodore admiral and rear admiral." (2) 5443 "Marine Corps officers on active duty: brigadier generals and major generals." (3) 5444 "Navy: staff corps officers on active duty in the grades of commodore admiral and rear admiral." Sections 5442 and 5443 would be amended by section 313 of this Act. Section 5444 would be amended by section 302 of this Act.

This subsection would strike from such table the item referring to section 5445 which authorizes the suspension of sections 5442, 5443, and 5444 as they currently exist.

This subsection would insert in the table the following items in lieu of the items of the same number as are now in the table: (1) 5447 "Navy: line rear admirals and commodore admirals on the active-duty list: numbers in permanent grade." (2) 5448 "Marine Corps: major generals and brigadier generals on the active-duty list; numbers in permanent grade." and (3) 5449 "Navy: staff corps rear admirals and commodore admirals on the active-duty list; numbers in permanent grade." Such sections would be amended by section 313 of this Act.

The item of such table relating to section 5452 of title 10, United States Code, which directs the Secretary of the Navy to prescribe the number of women line officers on active duty in the Navy and the number of women Marine Corps officers on active duty, would be stricken by this Act. Section 373(b) of this Act would repeal such section.

This subsection would amend the titles of sections 5457 and 5458 to conform such titles to a change made by amendment in 1960.

Subsection (19). This subsection would amend subsection 5444(d) of title 10, United States Code, relating to the grade of a chief of bureau, to change the reference to the law under which promotions would be made to conform to amendments made by this Act.

Subsection (20). This subsection would amend section 5446 of title 10, United States Code, to reflect the change from the use of the active list to the active-duty list.

Subsection (21). This subsection would amend section 5450 of title 10, United States Code, relating to the service of retired flag officers on active duty, to reflect the change to the grades of rear admiral and commodore admiral which would be effected by this Act.

Subsection (22). This subsection would amend subsection 5451(b) of title 10, United States Code, relating to the suspension during a war or national emergency of sections 5442, 5443, and 5444 as described in subsection (18).

Subsection (23). This subsection would amend section 5455 of title 10, United States Code, relating to the distribution of officers in grades, to reflect the repeal under subsection 373(b) of this Act of section 5452 relating to numbers of women officers in the Navy and Marine Corps.

Subsection (24). This subsection would modify section 5455 of title 10 to reflect the use of an active-duty list.

Subsection (25). This subsection would amend the table of sections at the beginning of chapter 535 of title 10, United States Code, by striking out the items relating to section 5504 referring to lineal lists and section 5505 referring to the change of lineal position by reserve officers. Those sections would be repealed by section 314 of this Act.

Subsection (26). This subsection would amend section 5506 of title 10, United States Code, relating to precedence among active duty Reserve officers of the Navy and Marine Corps, to subject the provisions of that section to section 741 of title 10, United States Code "Rank: commissioned officers of the Army, Navy, Air Force, and Marine Corps." which would be added by section 107 of this Act.

Subsection (27). This subsection would amend section 5508 of title 10, United States Code, relating to the rank of line and staff corps officers in the Navy and officers of the Marine Corps, to conform such section to the termination of the practice of assigning running mates and to the establishment of a single active-duty list for each service.

Subsection (28). This subsection would strike items referring to specified sections of title 10, United States Code, from the table of sections at the beginning of chapter 539 which sets forth provisions governing original appointments of regular and reserve officers, both male and female, in the Navy and Marine Corps. The items to be deleted would be replaced by sections 542, 543, and 544 of title 10, United States Code, which would be added by section 104 of this Act. Such sections set forth uniform provisions on original appointments in regular commissioned officer grades of all services.

Subsection (29). This subsection would amend section 5585 of title 10 to reflect the use of "active-duty list."

Subsection (30). This subsection would amend section 5587a of title 10, United States Code, relating to the designation of a Marine Corps officer as a judge advocate, to conform that section to amendments to the administration of the officer corps made by this Act.

Subsection (31). This subsection would strike from the table of sections at the beginning of chapter 541, title 10, United States Code, relating to running mates, items referring to all sections of that chapter except for that which refers to section 5665 which establishes the running mate system for Reserve officers of the Navy and Marine Corps. The running mate system would be abolished under this Act except for Reserve officers. Chapter 541 would be amended by section 332 of this Act.

Subsection (32). This subsection would amend section 5891 of title 10, United States Code, relating to the eligibility of Reserve active duty officers of the Navy and Marine Corps for promotion, is amended to conform to amendments to the promotion process made by this Act.

Subsection (33). This subsection would amend section 5892 of this Act, relating to the prescription by the Secretary of the Navy of the number of Reserve active duty officers of the Navy and Marine Corps who may be promoted, to conform to amendments to the determination of such numbers made by this Act.

Subsection (34). This subsection would amend sections 5896, 5897, and 5898, relating to the action of selection boards convened to consider the promotion of Reserve officers of the Navy and Marine Corps, to take into account the new provisions governing the appointment of Naval Reserve women officers in the Medical Corps, Dental Corps, Judge Advocate General's Corps, and Medical Service Corps, which would be effected by this Act.

Subsection (35). This subsection would amend section 5899 of title 10, United States Code, under which eligibility for promotion of Reserve officers of the Navy and Marine Corps is established, to conform to changes made to the promotion process under section 105 of this Act, to the appointment of certain women officers in staff corps of the Navy, and the change to the use of a single active-duty list for all officers.

Subsection (36). This subsection would amend section 5901 of title 10, United States Code, relating to the number of Reserve officers of the Navy and Marine Corps to be considered by selection boards, to conform such section to the repeal of sections 5756 through 5163 of title 10, United States Code, by section 333 of this Act, and to the promotion process which would be in effect under section 105 of this Act.

Subsection (37). This subsection would amend section 5902 of title 10, United States Code, relating to the eligibility for promotion and date of rank of Reserve officers of the Navy and Marine Corps who are on promotion lists, to conform such section to the promotion procedures which would be established under chapter 36 of title 10, United States Code, as added by section 105 of this Act.

Subsection (38). This subsection would amend subsection 5905(c) of title 10, United States Code, relating to the rank within his grade of a Reserve officer of the Navy or Marine Corps to conform such section to the use of the active-duty list as would be established under sections 101 and 105 of this Act.

Subsection (39). This subsection would amend subsection 5906 of title 10, United States Code, relating to the transfer of the inactive list of a Reserve officer of the Navy or Marine Corps who is recommended for promotion, to conform such section to the promotion procedures which would be established under chapter 36 of title 10, United States Code, as added by section 105 of this Act.

Subsection (40). This subsection would amend section 5910 of title 10, United States Code, relating to the promotion of Reserve officers of the Navy and Marine Corps under regulations of the Secretary of the Navy, in accordance with the change to use of a single active-duty list for all officers.

Subsection (41). This subsection would strike from the table of sections at the beginning of chapter 551 of title 10, United States Code, the reference to section 5955, relating to the withdrawal of retired officers from command. That section would be replaced by section 361 of this Act.

Subsection (42). This subsection would strike from the table of sections at the beginning of chapter 553 of title 10, United States Code, the item relating to section 5982, relating to the detail of retired officers to command of ships and squadrons. That section would be repealed by section 361 of this Act.

Subsection (43). This subsection would strike from the table of sections at the beginning of chapter 555 of title 10, United States Code, the items relating to sections 6018 and 6028 which refer, respectively, to restrictions on the assignment of Naval officers to shore duty, and the composition of the Medical Service Corps. Section 6018 would be repealed by section 372 of this Act. Section 6028 would be repealed by section 352 of this Act.

Subsection (44). This subsection would amend section 6015 of title 10, United States Code, relating to the prescription by the Secretary of the Navy of the manner of training and qualifying women members of the Regular Navy and Marine Corps, to delete reference to the appointment of Regular women officers under section 5590, which would be deleted by subsection 373(e) of this Act.

Subsection (45). This subsection would amend section 6151(a) of title 10 to reflect addition of sections 688 and 1370 to title 10 relating to retired members.

Subsection (46). This subsection would strike from the table of sections at the beginning of chapter 569 of title 10, United States Code, the item relating to section 6294 which refers to the termination of enlistment of women in the Regular Navy and Regular Marine Corps. Section 6294 would be repealed by subsection 373(g) of this Act.

Subsection (47). This subsection would amend subsections 6323(c) and 6325(a) of title 10, United States Code, which relate to the retired grade of an officer retired for years of service, to reflect the provision relating to the uniform provision on retired grade of commissioned officers which would be added by section 1370 of title 10, United States Code, by section 113 of this Act.

Subsection (48). This subsection would strike items referring to specified sections of title 10, United States Code, from the table of sections at the beginning of chapter 573 which sets forth provisions governing involuntary retirement, separations and furlough of regular officers, male and female, in the Navy and Marine Corps.

This subsection would change the wording of the item relating to section 6883 to eliminate the word "severance" in describing pay.

This subsection would change the wording of the item relating to section 6404 to reflect "separation" vice severance pay.

Subsection (49). This subsection would amend section 6403 of title 10, United States Code relating to elimination of women officers from active status of the Naval and Marine Corps Reserves. Wording would be inserted which would exclude an officer appointed under section 5188 before the effective date of DOPMA.

This subsection would amend section 6403 to provide that the conditions for elimination from active status may come from chapter 573 of title 10, United States Code or from the new chapter 36 which would be created by DOPMA.

This subsection would amend subsection 6403(a) by specifying "women line regular officer" and amending subsection 6403(b) by changing "active list" to active duty list.

Subsection (50). This subsection would amend section 6404 of title 10, United States Code, relating to computation of retired and severance pay by substituting "separation pay" for "lump-sum payments" and by changing the title to contain "separation" vice "severance" pay.

Subsection (51). This subsection would amend the table of sections at the beginning of chapter 575 regarding recall to active duty. The items relating to section 6481, Retired Officers of the Regular Navy and Regular Marine Corps: authority to recall; section 6487, Retired rear admirals: retired pay after two years of active duty; and section 6488, Wartime appointments or promotions: retention of grade upon release from active duty are struck.

Subsection (52). This subsection would amend the table of sections at the beginning of chapter 601 relating to officer procurement programs. The items relating to section 6909, Direct procurement: qualifications; retention or transfer to Reserve and section 6914, Reserve naval aviators: appointment in Regular Navy and Regular Marine Corps: eligibility; grade, rank and struck.

Subsection (53). This subsection would amend subsection 7042(a) of title 10, United States Code regarding Superintendent of the Naval Postgraduate School by changing "active list" to active-duty list.

Amendments to subtitle D of title 10, United States Code (section 504)

Section 504 would amend subtitle D as follows:

Clause (1) would amend the table of chapters at the beginning of subtitle D and the table of chapters at the beginning of part II of such subtitle by striking out the items relating to chapters 859, 860 and 865.

Clause (2) would amend section 8034(b) by striking out reference.

Clause (3) would amend the table of sections at the beginning of chapter 807 by striking out the item relating to section 8066.

Clause (4) would amend current section 8062(e) relating to the authorized strength of the Air Force to reflect proposed amendments to current section 138 made by the Act.

Clause (5) would amend current section 8067 to reflect the proposed repeal of sections 8289, 8293 and 8394 by this Act and to reflect the repeal of section 8291 in 1957 by Public Law 85–155 (71 Stat. 390). It would also substitute the designation "biomedical science officers" for the obsolete designation "medical specialists" in current subsection 8067(f).

Clause (6) would amend the table of sections at the beginning of chapter 831:

(a) by striking out the item relating to section 8202 and inserting in lieu thereof "8202. Air Force: strength in grades.";

(b) by striking out the item relating to section 8212 and inserting in lieu thereof "8212. Air Force Reserve: Air National Guard of the United States: strength in grades; temporary increases."; and

(c) by striking out the items relating to sections 8201, 8203, 8204, 8205, 8206, 8207, 8208, 8209, 8211, 8213, 8214, 8215 and 8230.

Clause (7) would amend current section 8210 by striking out "active list" in each place it appears in subsections (a) and (c) and inserting in lieu thereof "active-duty list" to conform this section with the proposed new section 620.

Clause (8) would amend current section 8212 relating to temporary increases in grade strengths to conform with other provisions of the Act that would repeal limits on regular officers by grades; and amend the heading of such section to read "8212. Air Reserve: Air National Guard of the United States: strength in grade; temporary increases."

Clause (9) would amend current sections 8222 and 8225 relating to the authorized strengths of the Air Force Reserve, Air National Guard and Air National Guard of the United States to delete references to a regular enlisted strength authorization contained in current section 8201(a), which would be repealed by this Act.

Clause (10) would amend the table of sections at the beginning of chapter 835 by striking out the items relating to sections 8284, 8285, 8286, 8287, 8288, 8289, 8293, 8294, 8295, 8296, 8297, 8298, 8299, 8300, 8301, 8302, 8303, 8306, 8307, 8308, 8309, 8312, 8313, and 8314.

Clause (11) would amend the table of sections at the beginning of chapter 837.

(a) by striking out the item relating to section 8352 and inserting in lieu thereof "8353. Commissioned Officers: service credit upon original appointment."; and

(b) by adding at the end thereof the following new item: "8396. Exclusion of Certain Officers."

Clause (12) would amend the table of sections at the beginning of chapter 839 by striking out the items relating to sections 8441, 8442, 8444, 8445, 8447, 8448, 8449, 8451, and 8452.

Clause (13) would amend the table of sections at the beginning of chapter 841 by striking out the items relating to sections 8494 and 8504.

Clause (14) would amend the table of sections at the beginning of chapter 843 by striking out the items relating to section 8531.

Clause (15) would amend the table of sections at the beginning of chapter 845 by striking out the items relating to sections 8571, 8573, 8574, and 8582.

Clause (16) would amend the table of sections at the beginning of chapter 861 by striking out the items relating to sections 8814 and 8818.

Clause (17) would amend the table of sections at the beginning of chapter 867 by striking out the items relating to sections 8913, 8915, 8916, 8919, 8921, 8922, 8923, and 8927.

Clause (18) would amend section 8924(a) by substituting "1186" for "8786." Proposed new section would carry forward the substance of current sections 8786 and 8796.

Clause (19) would amend section 8961 relating to a member's retired grade, to conform this section to the proposed new section 1370 which would prescribe the retired grades of commissioned officers.

Clause (20) would amend section 8962(a) (relating to a higher retired grade for certain positions) by striking out reference to officers in positions of importance and responsibility designated under section 8066. Such designations would be made in accordance with the proposed new section 601 and the authority to retire such officers in the highest grade held while serving on active duty would be provided by new section 1370(c).

Clause (21) would amend section 8963 by striking out subsection (a) and the subsection designation "(b)" at the beginning of subsection (b). Section 8963(a) currently authorizes regular and reserve officers of the Air Force to retire in a temporary grade higher than their permanent grade. Proposed new section 1370 provides uniform provisions relating to retirement grade.

Clause (22) would amend section 8991 by deleting formula A and redesignating formula B, formula C, and formula D as formula A, formula B, and formula C, respectively. Current formula A provides a method for computing the retired pay of a regular Air Force officer who is retired for age under section 8883, 8884, 8885, and 8886; or a regular Air Force officer retired for failure of promotion or length of service under sections 8913, 8915, 8916, 8919, 8921, 8922, and 8923. Each of these sections would be repealed. Retirement of regular officers for length of service or failure of promotion would be governed by the proposed new chapter 36, while retirement of officers for age would be governed by the proposed new section 1251. The substance of formula A would be restated in proposed new formula 5 of section 1401, except that no provision is made for computing retired pay of an officer with less than 20 years of creditable service.

Clause (23) would amend section 9301(b) by striking out "active list" in the first sentence and inserting in lieu thereof "active-duty list" to conform this section with proposed new section 620.

Clause (24) would amend section 9336 by (1) striking out "a promotion-list officer" in subsections (a) and (b) and inserting in lieu thereof "a regular officer" to reflect the abolishment of the promotion list composed solely of regular officers, and (2) inserting "or active-duty list" after "on the promotion list" in subsections (a) and (b) to provide for situations occurring before and after enactment of the Act.

Clause (25) would amend section 9353 by inserting "under section 531 of this title" after "regular Air Force" to provide that the appointment of cadets of the United States Air Force Academy, upon graduation, as second lieutenants in the regular Air Force, would be made under the proposed new section 531. Authority to commission graduates of the United States Air Force Academy in the regular Air Force would remain as it existed prior to the enactment of the Defense Officer Personnel Management Act.

Amendments to title 14, United States Code (section 505)

Section 505 of the Act would amend chapter 11 of title 14, United States Code, as follows:

Clause (1) of section 505(a) would insert after section 286 of title 14 a new section 286a as follows:

Section 286a would provide for the severance pay of regular warrant officers. This new section transfers the substance of current law in title 10 (as repealed by this Act) to title 14, United States Code.

Clause (2) of section 505(a) would insert a new item in the table of sections of chapter 19 to conform with the new section 286a.

Section 505(b) of the Act would amend section 438 of title 14, United States Code, by striking out "1167, 1255" and inserting in place thereof "1166".

Amendments to title 37, United States Code (section 506)

Section 506 would amend title 37, United States Code, as follows:

Clause (1) would amend section 101(18), a definition of "active duty" by striking out "active list" and inserting in place thereof "active-duty list."

Clause (2) would amend the item pertaining to section 202 in the table of sections at the beginning of chapter 3 to reflect the deletion of provisions in the section relating to rear admirals of the upper half in the Navy.

Clause (3) would amend the table contained in section 201(a) by striking out the reference "Environmental Sciences Services Administration" and inserting in place thereof "National Oceanic and Atmospheric Administration"; by striking "Rear Admiral (upper half)" in the third column and inserting in place thereof "Rear Admiral (Navy) and Rear Admiral (upper half) (Coast Guard and National Oceanic and Atmospheric Administration)"; and by striking "Rear Admiral (lower half) and Commodore" in the third column and inserting in place thereof "Commodore Admiral (Navy) and Rear Admiral (lower half) and Commodore (Coast Guard and National Oceanic and Atmospheric Administration)".

Clause (4) would amend section 204(a) by striking out the reference pertaining to members covered by section 202(i).

Clause (5) would amend the table of sections at the beginning of chapter 5 to conform with the repeal of sections 302c and 313.

Clause (6) would amend section 303a(b) by inserting "separation pay" after "retired pay".

Clause (7) would amend section 406 by inserting "separation pay" or before "severance pay" in subsections (d)(2) and (g)(2) and before "readjustment pay" in subsection (d)(2) and (g)(2).

Clause (8) would amend the table of sections before chapter 17 by striking out the references to sections 904 and 905 which are repealed.

Clause (9) would amend the table of sections before chapter 19 to reflect new sections 1010 and 1011.

Amendments to other laws (section 507)

Section 507 of the Act would amend other laws as follows:

Section 507(a) would amend section 101(12) by striking out the reference "active list" and inserting in place thereof "active-duty list".

Section 507(b) would amend section 502(a) by striking out paragraph 502(a)(8) to conform with the repeal of current provisions of law.

Subsection 507(c) would amend section 6(d) of the act of March 31. 1947, chapter 20 [50—U.S.C. App. 326(a)] to reflect the abolishment of active lists by proposed amendments in that act.

Subsection 507(d) would amend current section 10(b)(4) of the Military Selective Service Act to reflect the abolishment of active lists by proposed amendments in this Act.

Subsection 507(e) would repeal section 302 of the Department of Defense Appropriations Authorization Act, 1974.

Subsection 507(f) would amend section 3(a)(3) of the Act of August 10, 1956 and the section 221(a)(4) of the Public Health Service Act by inserting "1370," after "except sections" respectively.

PART B—AMENDMENTS TO MAKE TECHNICAL CORRECTIONS IN TITLES 10, 32, AND 37 OF THE UNITED STATES CODE OTHER THAN CORRECTIONS REQUIRED BY THIS ACT

General discussion

Part B of title V consists of a series of technical amendments to titles 10, 32, and 37 of the United States Code which are not directly related to the substance of the Defense Officer Personnel Management Act. The committee has added these amendments to the bill in order to make needed, and in many cases long overdue, technical corrections in the titles of the United States Code that are within the jurisdiction of the committee. The committee wishes to emphasize that the amendments in part B of title V of the bill would make no substantive change in the law and are not to be construed or interpreted as doing so.

The amendments fall into several general categories that are described below. These categories will be referred to by number in describing the effect of the amendments that would be made by specific provisions of part B of title V. When appropriate, more specific explanation will be added with the explanation of a specific provision.

Categories of amendment

1. References to the Department or Secretary of Health, Education, and Welfare would be changed to references to the Department or Secretary of Health and Human Services, or the Department or Secretary of Education, as appropriate, to reflect the creation of the Department of Education and the renaming of the Department of Health, Education, and Welfare (and the position of the Secretary of that Department) by the Department of Education Organization Act (Public Law 96–88; 93 Stat. 668).

2. References to the Department or Secretary of the Treasury, when made with respect to the department in which the Coast Guard is operating, would be changed to references to the Department or Secretary of Transportation to reflect the creation of the Department of Transportation and the transfer of the Coast Guard to that department by section 6(b) of the Department of Transportation Act (Public Law 89–670; 80 Stat. 931).

3. References to the Environmental Science Services Administration would be changed to references to the National Oceanic and Atmospheric Administration to reflect the abolishment of the Environmental Science Services Administration and the transfer of its functions to the National Oceanic and Atmospheric Administration by Reorganization Plan Numbered 4 of 1970 (84 Stat. 2090).

4. References to the Bureau of the Budget or the Director of the Bureau of the Budget would be changed to references to the President on the authority of Reorganization Plan Numbered 2 of 1970 (84 Stat. 2085), which transferred all statutory functions of the Bureau and Director to the President.

5. References to the Soldiers' Home would be changed to references to the United States Soldiers' and Airmen's Home to reflect the renaming of the United States Soldiers' Home effective September 7, 1972 (37 F.R. 23533).

6. Incorrect spelling, erroneous section designations, erroneous internal references, and other obvious errors would be corrected.

7. References to repealed provisions of law would be stricken.

8. References to provisions of unenacted titles of the United States Code would be changed to references to the statutes codified to those provisions with corresponding parenthetical United States Code citations.

9. Inconsistencies between section headings and the corresponding items in chapter analyses would be corrected.

10. Inconsistencies with the general style of the United States Code or with the style of the title of the United States Code being amended would be corrected.

11. References to the date of enactment of a law or provision of the Code would be changed to the actual date of enactment of the law or provision referred to.

Amendments to subtitle A of title 10, United States Code (section 511)

Section 511 of the bill would make various technical amendments to subtitle A of title 10, United States Code, as discussed below. Except as specifically noted, references in the explanation of such amendments are references to such title.

Paragraph (1). See explanation number 7.
Paragraph (2). See explanation number 4.
Paragraph (3). See explanation number 8.
Paragraph (4).—
    Subparagraph (A). See explanation number 10.
    Subparagraph (B). See explanation number 6.
Paragraph (5). See explanation number 8.
Paragraph (6).—
    Subparagraph (A). See explanation number 1.
    Subparagraph (B). See explanation number 10.
Paragraph (7).—
    Subparagraph (A). See explanation number 2.
    Subparagraph (B). See explanation number 11.
Paragraph (8). See explanation number 2.

Paragraph (9). See explanation number 7. Section 232 of title 14, United States Code, was repealed and its subject is now covered by section 291 of that title.

Paragraph (10).—
    Subparagraph (A). See explanation number 7.
    Subparagraph (B). See explanation number 12.
Paragraph (11). See explanation number 10.
Paragraph (12). See explanation number 8.
Paragraph (13). See explanation number 8.
Paragraph (14). See explanation number 8.
Paragraph (15). See explanation number 8.
Paragraph (16).—
    Subparagraph (A). See explanation number 7.
    Subparagraph (B). See explanation number 8.
Paragraph (17). See explanation number 8.
Paragraph (18).—
    Subparagraph (A). See explanation number 8.
    Subparagraph (B). See explanation number 2.
Paragraph (19). See explanation number 2.
Paragraph (20). See explanation number 10.
Paragraph (21). See explanation number 6.
Paragraph (22).—
    Subparagraph (A). See explanation number 2.
    Subparagraphs (B) and (C). See explanation number 6.
Paragraph (23). See explanation number 3.
Paragraph (24). See explanation number 3.
Paragraph (25). See explanation number 2.
Paragraph (26). See explanation number 9.
Paragraph (27). See explanation number 6.
Paragraph (28). See explanation number 10.

Paragraph (29). See explanation number 9. Inconsistent chapter heading and analysis items would be corrected.

Paragraph (30). A reference to "the Act enacting this section" would be changed to a reference to the Public Law number of the Act referred to. This change would provide greater clarity in the reference.

Paragraph (31). See explanation number 2.
Paragraph (32).—
    Subparagraph (A). See explanation number 2.
    Subparagraph (B). See explanation number 1.

Paragraph (33). See explanation number 6.

Paragraph (34). See explanation number 10. References within chapter 55 of title 10 to "section 1071–1087 of this title" would be changed references to "this chapter". The sections referred to originally were the entire chapter 55. Since the enactment of chapter 55, several new sections have been added and more may be added in the future, and reference to "this chapter" is more appropriate.

Paragraph (35). See explanation number 3.

Paragraph (36). See explanation number 1.

Paragraph (37). See explanation number 4.

Paragraph (38). See explanation number 10.

Paragraph (39).—

Subparagraph (A). See explanation number 10.

Subparagraph (B). See explanation number 8.

Paragraph (40). See explanation number 3.

Paragraph (41). See explanation number 6. Former subsection (b) was repealed by Public Law 90–130 (81 Stat. 374) without redesignating subsection (c) as subsection (b).

Paragraph (42). See explanation number 3.

Paragraph (43). See explanation number 2.

Paragraph (44). See explanation number 3.

Paragraph (45). *Section 1216(d)* would be amended to reflect the current title of the Assistant Secretary of Defense for Health Affairs. See *section 136(b)*.

Paragraph (46). *Section 1216(d)* would be amended to substitute a reference to section 511 of the Career Compensation Act of 1949 for an obsolete reference to section 311 of title 37, United States Code, as in effect before the enactment of title 37 by Public Law 87–649. Section 511 of the 1949 Act was neither included in title 37 nor repealed by Public Law 87–649.

Paragraph (47).—

Subparagraph (A). See explanation number 2.

Subparagraph (B). See explanation number 10.

Paragraph (48).—

Subparagraph (A). See explanation number 3.

Subparagraph (B). See explanation number 10.

Paragraph (49).—

Subparagraph (A). See explanation number 11.

Subparagraph (B). See explanation number 7.

Subparagraph (C). This amendment would reflect the current designation of the senior noncommissioned officer of the Navy.

Paragraph (50). See explanation number 11.

Paragraph (51). See explanation number 11.

Paragraph (52). See explanation number 8.

Paragraph (53). See explanation number 11.

Paragraph (54). This amendment would change the heading of *chapter 73* of title 10 to reflect the fact that both subchapters of that chapter contain programs providing annuities based on retired or retainer pay.

Paragraph (55). See explanation number 11.

Paragraph (56). See explanation number 10.

Paragraph (57). See explanation number 11.

Paragraph (58).—

Subparagraph (A). See explanation number 3.

Subparagraph (B). See explanation number 6. Former subsection (b) was repealed by Public Law 92-425 (86 Stat. 706) without redesignating subsection (c) as subsection (b).

Paragraph (59). See explanation number 8.

Paragraph (60). See explanation number 2.

Paragraph (61). *Section 1586* would be amended to reflect the transfer of functions from the United States Civil Service Commission to the Office of Personnel Management by section 102 of Reorganization Plan Numbered 2 of 1978 (92 Stat. 3784).

Paragraph (62).—

Subparagraph (A). See explanation number 6.

Subparagraph (B). See explanation number 10.

Paragraph (63). See explanation number 11.

Paragraph (64). "hereinafter referred to as" is amended to read "hereinafter *in this chapter* referred to as" to limit the scope of the "hereinafter".

Paragraph (65). See explanation number 1.

Paragraph (66). See explanation number 9.

Paragraph (67). See explanation number 1.

Paragraph (68).—

Subparagraph (A). See explanation number 6.

Subparagraph (B). See explanation number 10.

Subparagraph (C). See explanation number 1.

Paragraph (69). See explanation number 10.

Paragraph (70). See explanation number 10.

Paragraph (71). See explanation number 8.

Paragraph (72). See explanation number 4.

Paragraph (73). See explanation number 8.

Paragraph (74). See explanation number 2.

Paragraph (75). See explanation number 9.

Paragraph (76).—

Subparagraph (A). See explanation number 8.

Subparagraph (B). See explanation number 7.

Paragraph (77). See explanation number 10.

Paragraph (78). See explanations number 7 and 8.

Paragraph (79). See explanation number 9.

Paragraph (80). See explanation number 10. The Reports Elimination Act struck out subsection (b) of *section 2390* without striking out the subsection designation at the beginning of subsection (a).

Paragraph (81). See explanation number 8.

Paragraph (82). See explanations number 2 and 8.

Paragraph (83). *Section 2573* would be repealed to reflect the termination of the Panama Canal Zone pursuant to the Panama Canal Treaties.

Paragraph (84).—

Subparagraph (A). See explanation number 2.

Subparagraph (B). See explanation number 5.

Paragraph (85). See explanation number 10.

Paragraph (86). See explanation number 2.

Paragraph (87). See explanation number 8.

Paragraph (88). See explanation number 1.

Paragraph (89). See explanation number 9.

Paragraph (90). *Section 2664* would be amended to reflect the transfer of functions from the Federal Maritime Board to the Federal Maritime Commission by Reorganization Plan Numbered 7 of 1961 (75 Stat. 840).

Paragraph (91). See the explanation for paragraph (90).

Paragraph (92).—

Subparagraphs (A) and (B). See explanation number 8.

Subparagraphs (C) and (D). See explanation number 6.

Paragraph (93). See explanation number 4.

Paragraph (94). See explanation number 3

Paragraph (95). See explanation number 2.

Paragraph (96). See explanation number 9.

Paragraph (97).—

Subparagraph (A). See explanation number 3.

Subparagraph (B). See explanation number 2.

Paragraph (98). See explanation number 11.

Paragraph (99). See explanation number 10.

Amendments to subtitle B of title 10, United States Code (section 512)

Section 512 of the bill would make various technical amendments to subtitle B of title 10, United States Code, as discussed below. Except as specifically noted, references in the explanation of such amendments are references to such title.

Paragraph (1). The chapter analysis items for chapter 303 would be amended to reflect the insertion of *section 3010* at the beginning thereof.

Paragraph (2). See explanation number 9.

Paragraph (3). See explanation number 8.

Paragraph (4). A reference to "the Act enacting this section" would be changed to a reference to the Public Law number of the Act referred to. This change would provide greater clarity in the reference.

Paragraph (5). *Section 2534* would be amended to reflect the transfer of functions of the Commissioner of the District of Columbia to the Mayor of the District of Columbia by sections 421 and 711 of the District of Columbia Self-Government and Governmental Reorganization Act (Public Law 93-198; 87 Stat. 774).

Paragraph (6). See explanation number 9.

Paragraph (7). See explanation number 9.

Paragraph (8). See explanation number 10.

Paragraph (9). See the explanation for paragraph (4).

Paragraph (10). See explanation number 11.

Paragraph (11). See explanation number 1.

Paragraph (12). See explanation number 10. This amendment would make a stylistic change in *section 4331*.

Paragraph (13). This amendment would strike out executed words.

Paragraph (14). See explanation number 3.

Paragraph (15). See explanation number 8.

Paragraph (16). This amendment would make a technical change in the reference to certain sections of title 5, United States Code, to consistently refer to sections codified in complete subchapters as subchapters.

Paragraph (17). See explanation number 7.

Paragraph (18). See explanation number 5.

Paragraph (19). See explanation number 8.

Paragraph (20). See explanation number 5.

Paragraph (21). See explanation number 5.

Paragraph (22). *Section 4745* would be amended to reflect the transfer of functions from the Federal Maritime Board to the Secretary of Commerce by Reorganization Plan Numbered 7 of 1961 (75 Stat. 840).

Paragraph (23). See explanation number 9.

Paragraph (24).—

Subparagraph (A). See explanation number 6. Subsections (a), (b), and (c) of *section 4837* were repealed by Public Law 87-649, but the subsection designation for subsection (d) was not stricken out.

Subparagraphs (B) and (C). The heading of that section and the item relating to that section in the chapter analysis would be amended to reflect the current text of the section.

Amendments to subtitle C of title 10, United States Code (section 513)

Section 513 of the bill would make various technical amendments to subtitle C of title 10, United States Code, as discussed below. Except as specifically noted, references in the explanation of such amendments are references to such title.

Paragraph (1). The chapter analysis items for chapter 641 would be amended to reflect the insertion of *section 7420* at the beginning thereof.

Paragraph (2). *Section 5001* would be amended to strike out surplus words.

Paragraph (3). See explanation number 2.

Paragarph (4). This amendment would reflect the codification of the provision of law formerly codified to section 6 of title 5, United States Code, as section 3447 of the enacted title 5 by Public Law 89–554.

Paragraph (5). See explanation number 9.

Paragraph (6). See explanation number 9.

Paragraph (7). The section heading and chapter analysis item for *section 5201* would be amended to reflect the current text of that section, which does not deal with the pay of the Assistant Commandant of the Marine Corps.

Paragraph (8). The section heading and chapter analysis item for *section 5414* would be amended to reflect the current text of that section, which was amended by Public Law 86–559 to delete the word "permanent".

Paragraph (9). The section headings and chapter analysis items for *sections 5457 and 5458* would be amended to reflect the current text of those sections, which were amended by Public Law 86–559 to delete the word "permanent".

Paragraph (10). See explanation number 9.

Paragraph (11). See explanation number 9.

Paragraph (12). See explanation number 9.

Paragraph (13). See explanation number 9.

Paragraph (14). See explanation number 8.

Paragraph (15).—

Subparagraph (A). See the explanation of paragraph (16).

Subparagraph (B). See explanation number 9.

Paragraph (16). This amendment would make conforming changes to *section 6221* to reflect the repeal of subsection (b) of that section by Public Law 87-649.

Paragraph (17). See explanation number 11.

Paragraph (18). See explanation number 6.

Paragraph (19). These amendments would reflect the current designation of the senior noncommissioned officer of the Navy.

Paragraph (20). This amendment would reflect the repeal of section *6023(b)* by Public Law 92-168 and the coverage of the subject matter of the repealed provision by *section 2003*.

Paragraph (21). See explanation number 6.

Paragraph (22). This amendment would reflect the codification of the Classification Act of 1949 in the enactment of title 5, United States Code, and the appropriate terminology used to refer to grade GS-18 of the General Schedule.

Paragraph (23). See explanation number 2.

Paragraph (24). See explanation number 3.

Paragraph (25). See the explanation for section 512(16).

Paragraph (26). This amendment would make a technical change in the form of reference to the Act popularly known as the "Walsh-Healy Act".

Paragraph (27). See explanation number 10.

Paragraph (28). See explanation number 11.

Paragraph (29). See explanation number 8.

Paragraph (30).—

Subparagraph (A). See explanation number 6. *Section 7420* was enacted without a subsection (b).

Subparagraph (B). This amendment would reflect the transfer of jurisdiction over Naval Petroleum Reserve Numbered 4 from the Secretary of the Navy to the Secretary of the Interior made by section 103 of the Naval Petroleum Reserves Production Act of 1976 (Public Law 94-258; 90 Stat. 303).

Subparagraph (C). This amendment would reflect the transfer of jurisdiction over the Naval Petroleum Reserves from the Secretary of the Navy to the Secretary of Energy made by section 307 of the Department of Energy Organization Act (Public Law 95-91; 91 Stat. 581).

Paragraph (31).—

Subparagraph (A). This amendment would strike executed words and reflect the date of enactment of the Naval Petroleum Reserves Production Act of 1976, which was April 5, 1976.

Subparagraph (B). This amendment would substitute the specific citation of *section 7430* for a citation to "hereinafter".

Subparagraph (C). See explanation number 6.

Subparagraph (D). This amendment would correct the form of a citation to the Act of February 26, 1931.

Subparagraph (E). This amendment would make a conforming change to reflect the date of enactment of the Naval Petroleum Reserves Production Act of 1976 and would omit surplus words.

Subparagraph (F). This amendment would make a conforming change to reflect the date of enactment of the Naval Petroleum Reserves Production Act of 1976.

Paragraph (32). See explanation number 6.

Paragraph (33). See explanation number 8.

Paragraph (34).—

Subparagraph (A). See explanation number 10.

Subparagraph (B). This amendment would substitute a citation to the United States Code for a citation to the Statutes at large, since the United States Code would reflect the current text of the provision being cited.

Subparagraph (C). See explanation number 10.

Subparagraph (D). See explanation number 8.

Subparagraph (E). This amendment would insert a parenthetical United States Code citation after a reference to a statute (the Natural Gas Act) that is codified to an unenacted title of the United States Code.

Paragraph (35). See explanation number 6.

Paragraph (36). This amendment would reflect the transfer of jurisdiction over the Naval Petroleum Reserves from the Secretary of the Navy to the Seretary of Energy made by section 307 of the Department of Energy Organization Act (Public Law 95–91; 91 Stat. 581) and the definition of "Secretary" for purposes of chapter 641 in *section 7420*.

Paragraph (37).—

Subparagraph (A). These amendments would reflect the transfer of functions from the Administrator of the Energy Research and Development Administration to the Secretary of Energy made by section 301 of the Department of Energy Organization Act and would change a citation to the Statutes at Large to a citation to the relevant section of the United States Code.

Subparagraph (B). See the explanation for subparagraph (A).

Subparagraph (C). This amendment would specify that "herein contained" as used in *section 7438(c)* means in chapter 641.

Paragraph (38). See explanation number 8.

Paragraph (39). See explanation number 8.

Paragraph (40). This amendment would reflect the repeal of the statute codified to section 486 of title 44, United States Code, before the enactment of that title by Public Law 90–620, and the reenactment of the content of that section in section 3301 of such title.

Paragraph (41). See explanation number 3.

Paragraph (42). See explanation number 8.

Paragraph (43). See explanation number 8.

Amendments to subtitle D of title 10, United States Code (section 514)

Section 514 of the bill would make various technical amendments to subtitle D of title 10, United States Code, as discussed below. Except as specifically noted, references in the explanation of such amendments are references to such title.

Paragraph (1). The chapter analysis items for chapter 803 would be amended to reflect the insertion of *section 8010* at the beginning thereof.

Paragraph (2). See explanation number 8.

Paragraph (3). See explanation number 6.

Paragraph (4). See explanation number 9.

Paragraph (5). See explanation number 9.

Paragraph (6). See explanation number 9.

Paragraph (7). See explanation number 10.

Paragraph (8). See explanation number 11.

Paragraph (9). See explanation number 1.

Paragraph (10). See explanation number 10. This amendment would make a stylistic change in *section 9331.*

Paragraph (11). This amendment would strike out executed words.

Paragraph (12).—

Subparagraph (A). See explanation number 8.

Subparagraph (B). This amendment would reflect the repeal of the Travel Expense Act of 1949 and the enactment of its content as subchapter I of chapter 57 of title 5.

Paragraph (13). See explanation number 3.

Paragraph (14). See explanation number 8.

Paragraph (15). This amendment would make a technical change in the reference to certain sections of title 5, United States Code, to consistently refer to sections codified in complete subchapters as subchapters.

Paragraph (16). See explanation number 7.

Paragraph (17). See explanation number 5.

Paragraph (18). See explanation number 8.

Paragraph (19). See explanation number 5.

Paragraph (20). See explanation number 5.

Paragraph (21). See explanation number 9.

Paragraph (22).—

Subparagraph (A). See explanation number 6. Subsections (a), (b), and (c) of *section 4837* were repealed by Public Law 87-649, but the subsection designation for subsection (d) was not stricken out.

Subparagraphs (B) and (C). The heading of that section and the item relating to that section in the chapter analysis would be amended to reflect the current text of the section.

Amendments to title 32, United States Code (section 515)

Section 515 of the bill would make various technical amendments to title 32, United States Code, as discussed below. Except as specifically noted, reference in the explanation of such amendments are references to such title.

Paragraph (1). See explanation number 9.

Paragraph (2). See explanation number 6.

Paragraph (3). See explanation number 10.

Paragraph (4). See explanation number 6.

Paragraph (5). See explanation number 10.

Paragraph (6).—

Subparagraph (A). This amendment would reflect the repeal of section 6102 of title 5, United States Code, and the restatement of its content is section 6101(a) of that title by Public Law 92–392.

Subparagraphs (B) and (C). See explanation number 10.

Paragraph (7). This amendment would strike out executed words.

Paragraph (8). See explanation number 8.

Paragraph (9). See explanation number 11.

Amendments to title 37, United States Code (section 516)

Section 516 of the bill would make various technical amendments to title 37, United States Code, as discussed below. Except as specifically noted, references in the explanation of such amendments are references to such title.

Paragraph (1).—

Subparagraph (A). See explanation number 3.

Subparagraph (B). See explanation number 1.

Paragraph (2). See explanation number 6.

Paragraph (3). See explanation number 3.

Paragraph (4). See explanation number 8.

Paragraph (5). This amendment would make certain stylistic changes to conform to the general style of title 37.

Paragraph (6). See explanation number 1.

Paragraph (7). See explanation number 1.

Paragraph (8). See explanation number 6. Former clause (2) was repealed by Public Law 92–581 (86 Stat. 1277).

Paragraph (9). See explanation number 10.

Paragraph (10).—

Subparagraph (A). See explanation number 3.

Subparagraph (B). See explanation number 10.

Paragraph (11).—

Subparagraph (A). See explanation number 6.

Subparagraphs (B) and (C). See explanation number 10.

Paragraph (12). See explanation number 10.

Paragraph (13). See explanation number 9.

Paragraph (14).—

Subparagraph (A). See explanation number 11.

Subparagraph (B). See explanation number 6.

Subparagraph (C). See explanation number 10.

Subparagraph (D). This amendment would reflect the transfer of the functions of the Surgeon General of the United States to the Secretary of Health, Education, and Welfare by Reorganization Plan Numbered 3 of 1966 (80 Stat. 1610) and the redesignation of the office of Secretary of Health, Education, and Welfare as Secretary of Health and Human Services by the Department of Education Organization Act).

Paragraph (15). See explanation number 3.

Paragraph (16). See explanation number 8.

Paragraph (17). See explanation number 1.

Paragraph (18). See explanation number 3.

Paragraph (19). See explanation number 6.

Paragraph (20).—

Subparagraph (A). See explanation number 6. Former subsection (b) was repealed by Public Law 89-718 (80 Stat. 1123) without redesignating subsection (c) as subsection (b).

Subparagraph (B). See explanation number 3.

Paragraph (21). See explanation number 9.

Paragraph (22).—

Subparagraph (A). See explanation number 3.

Subparagraph (B). See explanation number 1.

Paragraph (23). See explanation number 8.

Paragraph (24).—

Subparagraph (A). See explanation number 10.

Subparagraph (B). See explanation number 7.

TITLE VI—TRANSITION PROVISIONS

PART A—TRANSITION PROVISIONS RELATING ONLY TO THE ARMY AND AIR FORCE

Regular officers serving in or recommended for promotion to a temporary grade below lieutenant general (section 601)

Section 601 of the Act would provide a transitional mechanism to assure that regular officers who, under the laws prior to the effective date of the Act, are serving in a higher temporary grade than their permanent grade, have been selected for promotion to a temporary grade, or have been selected for a permanent grade higher than the grade in which serving, shall be considered to have been recommended by a board convened under the proposed new section 611(a) to a permanent grade under the Act equal to the relevant grade. The section does not apply to officers serving as generals or lieutenant generals.

Section 601(b) would assure a regular officer who was serving in a temporary grade higher than his permanent grade on the effective date of the Act whose name was removed from the list visualized by subsection 601(a) consideration by a board convened under chapter 36 of title 10, United States Code, as added by the Act. Such board may recommend promotion to a grade equal to the temporary grade in which the officer is serving. The recommendation of that board would be subject to the advice and consent of the Senate.

Section 601(c) would provide that the date of rank of an officer serving in a temporary grade on the effective date of the Act is the date of temporary appointment in grade. This assumes that the officer was not removed from the list developed under section 601(a) prior to the effective date of the Act.

Reserve officers serving in or recommended for promotion to a higher grade (section 602)

Section 602 of the Act would preserve the promotion status of an Army or Air Force reserve officer who is serving in a temporary grade that is higher than his reserve grade or whose name is on a recommended list for promotion to a temporary grade that is equal to or higher than his reserve grade when the Act becomes effective. This paragraph provides that such an officer is considered as having been recommended for promotion in accordance with provisions of proposed new chapter 36, to the grade in which serving or to which recommended for promotion.

Section 602(b) of the Act would assure that a reserve officer, on active duty, in a temporary grade lower than his reserve grade shall retain the temporary grade. That officer shall also be considered for promotion to a permanent grade equal to or lower than his reserve grade. In this regard his temporary grade shall be considered as his permanent grade. The promotion shall be by a board convened under chapter 36 of title 10, as added by the Act. If the officer is recommended for promotion, the promotion shall be subject to the advice and consent of the Senate.

Regular officers once failed of selection for promotion (section 603)

Section 603 of the Act would provide that an officer of the Army or Air Force holding the regular grade of first lieutenant, captain, or major, who was considered once but not selected for promotion to the next higher regular grade by a selection board convened under prior law shall, within one year from the effective date of the Act, be considered again for promotion. If the officer is again not selected, unless continued on active duty under proposed new section 637, he would be discharged or retired. If discharged, he would be entitled to elect severance pay under laws in effect prior to the effective date of the act, or if qualified, separation payment under proposed new section 1174. The provisions of current law with respect to retention on active duty until eligible for retirement would also apply. If the officer is recommended for promotion he would be promoted to the next higher regular grade or a regular grade equivalent to the temporary grade in which he has been serving, whichever is higher.

Regular officers twice failed of selection for promotion (section 604)

Section 604 of the Act would provide that an officer of the Army or Air Force, holding the regular grade of first lieutenant, captain, or major, who has twice failed of selection for promotion to the next higher regular grade under prior laws would, unless continued on active duty under proposed new chapter 36, be retired and entitled to retired pay, or discharged, as the case may be, under the laws in effect on the day before the effective date of the Act. An officer discharged under this clause would be entitled to elect to receive severance pay under laws in effect prior to the effective date of the Act or, if qualified, separation payment under proposed new section 1174. The provisions of current law with respect to retention on active duty until eligible for retirement would also apply.

Reserve officers once failed of selection for promotion (section 605)

Section 605 of the Act would provide the standards to be applied during the transition period in the case of a reserve officer on active duty who has once failed of selection for promotion to the next higher reserve grade.

Section 605(a) of the Act would provide that a reserve commissioned officer of the Army or Air Force, other than one excluded from placement on the active-duty list by section 641, serving on active duty on the effective date of the Act, who has a reserve grade of first lieutenant, captain, or major, who was considered once and not recommended for promotion to the next higher reserve grade under section 3366, 3367, 8366, or 8367 shall, if otherwise eligible, be considered again for promotion to the next higher reserve grade by a selection board convened under current section 3366, 3367, 8366, or 8367 of title 10, United States Code, as appropriate.

Section 605(b)(1) of the Act would assure that an officer who was serving on active duty in a grade higher than his reserve grade and was recommended by a board, contemplated by subsection 605(a), for promotion to a reserve grade equivalent to his temporary grade, would be considered as having been recommended for promotion to that reserve grade by a selection board convened under section 611(a) of title 10, United States Code, as added by the Act. It would also grant such an officer an active duty date of rank that is the same as the date of his temporary appointment in that grade.

Section 605(b)(2) of the Act addresses the situation of a reserve officer, serving on active duty in a temporary grade equivalent to or higher than his reserve grade, who has become subject to provision of subsection (a). Should this officer be promoted to a reserve grade higher than his temporary grade, he would first be regarded as having been recommended for promotion under section 3366, 3367, 8366, or 8367 of title 10, United States Code. In such a case, unless subsequently ordered to active duty in his reserve grade, he would retain his temporary grade and be considered for promotion under chapter 36 of title 10, United States Code, as if his temporary grade were his permanent grade. If this reserve officer is recommended for promotion as a result of such consideration, he shall be given a temporary appointment by the President, with the advice and consent of the Senate.

In the analysis of subsection 605(b)(2) the hypothetical case of Air Force Major Richard Roe may be helpful.

1. Roe, prior to the effective date of the act, was serving on active duty as a major. His reserve grade was also major. In the same time frame, he was not selected by a board convened under 8366 or 8367.

2. Subsequent to the effective date of the Act, Major Roe is considered by a second selection board convened under the authority of section 605(a) of the Act and section 8366 or 8367.

3. Assuming Major Roe is recommended for promotion to lieutenant colonel by such second 8366 or 8367 board, the subsection states that he would retain his temporary grade of major. He would then be considered for promotion on active duty under chapter 36 of title 10. The promotion process at this point must take his temporary grade (major) as if it were Roe's permanent grade. If subsequently selected for promotion to lieutenant colonel under chapter 36, the appointment would also be a temporary appointment since Major Roe could not be again appointed to the permanent reserve grade of lieutenant colonel. [The statute also envisions the possibility of promotion to a lower grade than the reserve grade in cases where there is a greater grade disparity than in Roe's case.]

4. If Roe is recommended for promotion under the procedures of chapter 36 of title 10, he shall be given a temporary appointment as a lieutenant colonel by the President, by and with the advice and consent of the Senate.

Section 605(b)(3) relates back to subsection 605(a) of the Act and the situation of the officer who is not recommended for promotion by the board sanctioned by that subsection. Such an officer would be released from active duty and transferred to the retired reserve, if eligible, or he would be discharged or retained on active duty until eligible for retirement in accordance with current section 3846 or 8846.

Reserve officers twice failed of selection for promotion (section 606)

Section 606 of the Act would provide that a reserve commissioned officer on the active-duty list of the Army or Air Force, as appropriate, who, prior to the effective date of the Act, has been considered twice for promotion to the reserve grade of captain, major, or lieutenant colonel, but has not been selected, would continue to be subject to current law and would be transferred to the retired reserve, discharged, or, if within two years of qualifying for retirement, be retained on active duty until eligible for retirement, as appropriate. He could, however, elect separation pay as proposed in the Act or readjustment pay as provided under current law.

Entitlement to severance pay or separation pay of officers separated or discharged pursuant to this part (section 607)

Section 607 of the Act is a transitional provision giving direction regarding the type of fiscal assurance to which officers become entitled if their service is terminated under section 603, 604, 605 or 606.

Subsection 607(a) of the Act would assure a regular officer terminated under section 603(b)(2) or 604 of severance pay under prior law or, if qualified, separation pay under new section 1174(a) of title 10, United States Code.

Subsection 607(b) of the Act would assure that a reserve officer whose services were terminated under section 605(b)(3) or section 606 would be entitled to readjustment pay under present section 687 of title 10 or separation pay under new section 1174(c), if qualified.

Special tenure provisions for officers serving in temporary grades of brigadier general or major general (section 608)

Section 608 of the Act addresses the unique problems inherent in the situation in which a major general or brigadier general (temporary) was promoted to an equivalent permanent grade by virtue of either having been considered as having been recommended by a board convened pursuant to section 611(a), or by immediate authority of section 601(a) of the Act. This group will, in the following paragraphs relating to section 608, be referred to as the subject class. Section 608(a) would direct that officers in the subject class would normally be subject to mandatory retirement under the laws applicable on the day before the effective date and in the permanent grade held on that date. As an exception, an officer in the subject class above whose permanent grade is lower than colonel shall nevertheless not be subject to mandatory retirement until he completes 30 years of service.

Subsection 608(b)(1) of the Act would establish a procedure for establishing a different sequence of mandatory retirement dates for the subject class than that prescribed in subsection (a). The Secretary concerned is authorized to convene boards to grant officers mandatory retirement dates based upon laws in force on the day before the effective date of this Act. Such dates will be (1) predicated upon the grade to which promoted under Section 601(a) or (2) based upon a lower grade than the relevant 601(a) grade, which nevertheless shall be higher than the officer's permanent grade on the day before the effective date.

In this connection it is appropriate to visualize the case of Major General John Doe. We assume that Doe had, prior to the effective date of this Act, been a temporary major general and a regular colonel. It is also assumed that Doe, having been considered as on a recommended list from a 611(a) board, pursuant to 601(a), is ultimately promoted. If no board action is taken, subsection (a) would fix his mandatory retirement date as based upon thirty years service or five years in his permanent grade of colonel.

Doe would be considered by a board convened under subsection (b). That board could then recommend (a) that Doe's tenure remain unchanged, (b) that Doe be subject to mandatory retirement under prior laws as if he had only been promoted to brigadier general or (c) that Doe's mandatory retirement date be based on the grade of major general, permanent, to which he had been promoted under section 601(a). Should the result be (a) or (b), Doe could subsequently be considered by future boards convened under this section.

Subsection 608(b)(2) of the Act empowers the Secretary, upon recommendation of a board convened under section 608(b)(1), to select officers to be subject to mandatory retirement as brigadier generals or major generals under laws in effect on the day before the effective date of this Act.

Subsection 608(b)(3) of the Act would provide that selection boards convened under this section shall be convened in accordance with the provisions of current sections 3297 and 8297 of title 10, United States Code.

Subsection (c) would provide that the transitional rules that would be established under this section would not apply to officers (1) sooner retired or separated under another provision of law, (2) promoted to major general by a board convened under the provisions of the proposed new chapter 36, or (3) continued on active duty under the continuation provisions added by the Defense Officer Personnel Management Act. Such officers would be subject to the mandatory retirement provisions added by the proposed new chapter 36 and section 1251.

Right of majors and colonels to complete years of service allowed under prior law (section 609)

Section 609 of the Act is a transition provision relating to the retirement of Army or Air Force officers as follows:

Subsection 609(a) of the Act affects an Army or Air Force officer who, on the day before the effective date of the Act, held (or was on a recommended list for promotion to) the regular grade of major. Under current law, that officer is virtually assured of approximately 21 years of active commissioned service before he can be involuntarily retired. Under amendments added by the Act he *could* be discharged, if he twice failed selection to lieutenant colonel, before attaining 20-

year retirement eligibility. This provision preserves the entitlement of such an officer to the tenure accorded him under current law.

Subsection 609(b) affects an officer of the Army or Air Force, who, on the day before the effective date of the Act, held (or was on a recommended list for promotion to) the regular grade of colonel. Under current law, such an officer may not be retired involuntarily until he has completed 30 years of active commissioned service or five years in grade, whichever is later. Proposed new chapter 36 would authorize the involuntary retirement of the described officer upon completion of 30 years of active commissioned service without regard to time in grade. This provision preserves the entitlement of an affected officer to the tenure accorded him under current law.

Each subsection contains language that excludes from its operation officers whose status has been significantly changed by operation of other laws.

Regular officer whose retirement has been deferred (section 610)

Section 610 of the Act would preserve the status of an officer of the Army or Air Force whose retirement is deferred or suspended before the effective date of the Act. Such an officer will continue to serve on active duty according to the terms of his deferral or suspension order.

PART B—TRANSITION PROVISIONS RELATING ONLY TO THE NAVY AND MARINE CORPS

Officers in a temporary grade or recommended for promotion (section 611)

Subsection 611(a) of the Act would provide that any Regular or Reserve officer of the Navy or Marine Corps who, on the day before the effective date of the Act, was subject to placement on the active-duty list compiled pursuant to the Act, and who on that date was serving on active duty in a temporary grade below vice admiral or lieutenant general which is higher than his permanent grade, or who is on a promotion list, shall be considered to have been recommended for promotion to the permanent grade equivalent to the grade in which he is serving or for which he has been selected, by a selection board convened under section 611 of title 10, United States Code, as added by the Act.

Subsection 611(b) of the Act would exclude from the transition provision established by subsection (a): (1) an officer serving in a temporary grade which, by its own terms, is limited in duration; (2) an officer designated for limited duty by temporary appointment under section 5596 of title 10, United States Code, as amended by section 327 of the Act; or (3) an officer promoted to or recommended for promotion to a temporary grade under section 5787 of title 10, United States Code.

This treatment is consistent with the abolition of peacetime temporary appointments to grades below O–9 for promotion purposes. This provision enables an officer to continue service in the higher grade held by virtue of a temporary appointment and will have the effect of converting his temporary grade to a permanent grade subject to

Presidential appointment and confirmation by the Senate under new chapter 36.

Officers failed of selection for promotion (section 612)

Section 612 of the Act would place an officer of the Navy or Marine Corps who, on the effective date of this Act, is considered to have failed of selection for promotion one or more times to a grade below O-6, under the promotion procedures of chapter 36 of title 10, United States Code, as added by the Act, as if the failure or failures had occurred under the provisions of that chapter.

Right of certain officers to retire under prior law (section 613)

Subsection 613(a): lieutenant commander, major; commander, lieutenant colonel; captain, colonel. This subsection would provide that a Navy or Marine Corps officer who held the regular grade of captain (Navy), colonel, commander, lieutenant colonel, lieutenant commander, or major, or who was on a promotion list to one of these grades on the day before the effective date of the Act, shall be retired on the date provided under current law. This subsection would provide, that such an officer will be retired under amendments made by the Act if he is selected for promotion to a higher regular grade or continued on active duty after the effective date of the Act.

Subsection 613(b): rear admiral, brigadier general. Paragraph (1) of subsection (b) of section 613 of the Act would provide that a Navy officer who held the regular grade of rear admiral or was on a promotion list to that grade on the day before the effective date of the Act shall be either continued on active duty or retired under the laws in effect on the day before the effective date of the Act.

Paragraph (2) of subsection (b) of section 613 of the Act would provide that a Marine Corps officer who held the regular grade of brigadier general or was on a promotion list to that grade on the day before the effective date of the Act shall be either continued on active duty or retired under the laws in effect on the day before the effective date of the Act.

Transition to new commodore admiral grade (section 614)

Section 614 of the Act would provide for the transition from the use by the Navy of the grade of rear admiral with the subdivisions of lower half and upper half to the use of the two distinct grades of commodore admiral, which is created by section 301 of the Act, and rear admiral. Covered by this section are matters of grade, pay, uniform, insignia, promotion and retirement for active duty and retired officers serving in the grade of rear admiral on the effective date of the Act.

Paragraph (1) of subsection (a) of section 614 of the Act would provide that a Navy officer who, on the day before the effective date of the Act, was on active duty in the grade of rear admiral and was entitled to the basic pay of a rear admiral of the upper half shall be serving in the grade of rear admiral after that date.

An officer who, on the day before the effective date of the Act, was on active duty in the grade of rear admiral and was entitled to the basic pay of a rear admiral of the lower half would be serving in the grade of commodore admiral after such date but would retain the title of rear admiral.

Paragraph (2) of subsection (a) of section 614 of the Act would provide that an officer who on the day before the effective date of the Act was on a promotion list to the grade of rear admiral shall serve in the grade of commodore admiral with the title of rear admiral.

Subsection 614(b) of the Act would provide that an active duty officer who, on the day before the effective date of the Act was serving in the grade of rear admiral with the pay of a rear admiral of the lower half, or who was on a promotion list to the grade of rear admiral, shall be entitled to wear the uniform and insignia of a rear admiral after the effective date of the Act.

Subsection 614(c) of the Act would provide that a Navy officer who held the grade of rear admiral on the retired list or the temporary disability retired list on the day before the effective date of the Act shall retain the grade of rear admiral and be entitled to wear the uniform and insignia of that grade after the effective date of the Act. The subsection would direct that such an officer, when ordered to active duty, holds the grade and has the right to wear the uniform and insignia of a rear admiral. The subsection would establish the rank and pay of such an officer when recalled to active duty at that of a commodore admiral if his retired pay was based on that of a rear admiral of the lower half, and at that of a rear admiral if his retired pay was based on that of a rear admiral of the upper half.

Paragraph (1) of subsection (d) of section 614 of the Act would exempt from the promotion procedures established by chapter 36 of title 10, United States Code, as added by the Act, an active duty Navy officer serving in the grade of commodore admiral with the title of rear admiral pursuant to the provisions of subsection 614(a).

Paragraph (2) of subsection (d) of section 614 of the Act would provide for the promotion to the grade of rear admiral of a commodore admiral with the title of rear admiral in accordance with the provisions of subsections (a) through (d) of section 202 of title 37, United States Code, as in effect on the day before the effective date of the Act.

Subsection 614(e) of the Act would provide that an active duty Navy officer who held the grade of rear admiral on the day before the effective date of the Act and who retires on or after such date, retires in the grade of rear admiral and is entitled to the uniform and insignia of that grade. For the purpose of determining the pay, uniform and insignia, and rank of such an officer upon his recall to active duty, this subsection would provide the same treatment as that afforded to a rear admiral on the retired list on the effective date of the Act (refer to subsection 614(c)).

Subsection 614(f) of the Act would exempt from the mandatory retirement provision of subsection (f) of section 6389 of title 10, United States Code, as added by section 337 of the Act, a Reserve officer of the Navy who, on the day before the effective date of the Act, was in an active status and was: (1) serving in the grade of rear admiral; or (2) on a list of Reserve officers recommended for promotion to that grade.

Female officers (section 615)

Section 615 of the Act is a transition section that would integrate women officers of the Navy and Marine Corps with their male counterparts.

Subsection 615(a) of the Act would require that Regular women officers on the active list in the line of the Navy or on the active list of the Marine Corps on the day before the effective date of the Act, by reason of appointment under section 5590 of title 10, United States Code, be reappointed in the line of the Navy or in the Marine Corps. Each officer reappointed under this subsection would retain the grade and date of rank held by that officer immediately before reappointment. Reappointments would be made without regard to limitations of age, grade, or physical standards that restrict appointments under current law. All provisions of law applying to Regular male officers of the Navy or Marine Corps would apply to women officers unless specifically provided otherwise.

Subsection 615(b) of the Act would require that every Regular woman officer serving in a staff corps of the Navy under an appointment pursuant to section 5590 of title 10, United States Code, be reappointed in the same corps under the Act in the grade and with the date of rank held before the effective date of the Act. Reappointments made under this subsection would be made without regard to limitations of age, grade or physical standards that restrict appointments under current law.

Subsection 615(c) of the Act would permit any Regular woman officer appointed to the line of the Navy under section 5590 of title 10, United States Code, to elect to be reappointed in a staff corps for which she is qualified.

Subsection 615(d) of the Act would provide that all women officers appointed or reappointed in a staff corps under the Act shall be considered as having been originally appointed in that staff corps in accordance with title 10, United States Code, as amended by the Act.

Subsection 615(e) of the Act would apply to women officers appointed or reappointed under the Act, all provisions of law relating to appointment, promotion, separation and retirement that apply to male officers of the Regular Navy or Regular Marine Corps.

Subsection 615(f) of the Act would direct that all women officers appointed or reappointed under this section be integrated on the appropriate active-duty list of the Navy or Marine Corps in accordance with regulations prescribed by the Secretary of the Navy. Placement on such list would be made in such a way as to preserve the relative seniority of the women officers. This subsection would provide for the placement of female officers on promotion lists in positions that result in neither advantage nor disadvantage to male or female officers with similar records before promotion boards.

Subsection 615(g) of the Act would provide that women officers of the Navy or Marine Corps who have been appointed under current section 5590 of title 10, United States Code, who have not twice failed of selection for promotion prior to the effective date of the Act, and who are not selected for promotion to a higher regular grade after the effective date of the Act, may not be retired earlier than the date on which they would have been retired under current law.

Subsection 615(h) of the Act would permit Regular Navy officers of the Nurse Corps and Regular women officers of the Navy and Marine Corps appointed under section 5590 of title 10, United States Code, in the grades of lieutenant, captain, lieutenant (junior grade) and first lieutenant, who, because of failure of selection for promotion, would be subject to discharge under section 632 or 631 of title 10, United States Code, as added by the Act, to opt to remain [illegible]e service until the completion of the period of commissioned service [illegible]horized under sections 6396, 6401 or 6402 of title 10, United States C[illegible] as such sections are now in effect.

Regular Navy and Marine Corps limited duty officers (section 616)

Section 616 of the Act would continue in effect, as set fourth in section 6383 of title 10, United States Code, before the effective date of the Act, the law governing retirement for length of service, retirement or discharge for failures of selection for promotion, reversion to prior status, severance pay, and retired grade and pay of Regular limited duty officers of the Navy or Marine Corps for those officers who were so designated before the effective date of the Act. Limited duty officers who are promoted to a higher grade under chapter 36 of title 10, United States Code, as added by the Act, would be under section 6383 as amended by the Act.

Certain Navy lieutenants holding temporary appointments in the grade of lieutenant commander (section 617)

Section 617 of the Act would provide that certain Navy lieutenants possessing critical skills who hold temporary appointments in the grade of lieutenant commander under current law would continue to serve in that grade after the effective date of the Act as provided for in section 5721 of title 10, United States Code as added by section 334 of the Act.

Director of Budget and Reports of the Navy (section 618)

Section 618 of the Act would provide that an officer who is serving on active duty on the day before the effective date of the Act and who has become entitled to rank and retirement privileges as a result of his appointment as Director of Budget and Reports under section 5064 of title 10, United States Code, (which would be amended by the Act) shall have his rank and retirement privileges determined under current law.

PART C—GENERAL TRANSITION PROVISIONS

Establishment of initial active-duty lists (section 621)

Section 621 of the Act is a transition provision that provides a period of six months during which officers are to be placed on the active-duty list. Because of the administrative problems involved in placing officers on the active-duty list, such a provision is necessary to assure an orderly transition period; however, placement on the new active-duty lists will be considered to have been completed on the effective date of the Act. In order to preserve the relative seniority of officers, it provides that officers shall be placed on the active-duty list in the order of seniority existing before the effective date of the Act.

Subsection 621(b) would provide the Secretary of the military department concerned the authority to adjust the date of rank of any officer serving on active duty on the effective date of the Act. This authority would continnue for one year after the effective date of the Act. It is intended to insure that the relative seniority of officers within a military department as existed on the day before the effective date of the Act be maintained.

Officers serving in the same temporary grade and permanent grade; date of rank (section 622)

Section 622 of the Act would assure that an officer whose temporary grade is the same as his permanent grade on the day before the effective date of this Act shall serve in that grade under the provisions of this Act on its effective date and that his date of rank shall be the date of appointment to the temporary grade.

Officers serving in grades above major general or rear admiral (section 623)

Section 623 of the Act would assure that officers who, on the day before the effective date of this Act, are serving or who have served in the grade of general, lieutenant general, admiral, or vice admiral would be treated as though their appointment to that grade had been made under section 601 of this Act.

Section 623(a) of the Act would provide that such an officer who held an appointment made under current sections 3066, 5231, 5232, or 8066 on the day before the effective date of the Act would continue to serve on the effective date of the Act as if the appointment had been made under the proposed new section 601.

Section 623(b) of the Act assures that a position designated as being of importance and responsibility prior to the effective date of the Act would retain such characteristic immediately after the effective date and will be regarded as having been designated under section 601 as added by the Act.

Section 623(c) of the Act would assure that an officer on active duty on the effective date of the Act in a grade below lieutenant general or vice admiral, would be able to retire in that higher grade in which he had served prior to the effective date of the Act if nominated for retirement in such grade by the President and confirmed by the Senate.

Years of service for involuntary retirement or discharge (section 624)

Subsection 624(a) is a savings provision that would enable the officers covered by it to retain the years of service with which they were credited for purposes of mandatory retirement or discharge, prior to the effective date of the Act. These years will then be added to the years of service accrued under other provisions of the Act.

Subsection 624(b) would empower the Secretary of Defense to prescribe regulations under which creditable service for involuntary retirement of certain officers shall be computed. Because of a defect in current law, no means of computing service for Navy staff officers exists.

Savings provision for constructive service previously granted (section 625)

Section 625 of the Act would provide that the Act will not affect the years of service credited to an officer before the effective date of the Act. It specifically would provide that such service creditable for computation of basic pay and retired pay in effect on the day before the effective date of the Act would continue to be creditable after the effective date. In addition, it would specifically provide that individuals in programs leading to an appointment which would result in the award of constructive service creditable for computation of basic pay and retired pay would be granted such credit and that it would be creditable for such purposes. This is necessary since such individuals have been counselled regarding these entitlements and have entered these programs, at least in part, because of their existence.

Miscellaneous provisions relating to years of service (section 626)

Subsection 626(a) of the Act would entitle an officer to the years of service creditable to him on the day before the effective date of the Act plus subsequent service creditable under amendments made by the Act in computing pay and allowances (including retired, severance, readjustment, separation, and basic pay).

Subsection 626(b) of the Act is a savings provision that applies to certain officers who, under current law, may become eligible for length-of-service retirement with less than 20 years of active service. Such officers are currently entitled to retired pay in an amount equal to not less than 50 percent of the basic pay upon which retired pay is based. This provision would entitle an officer who is on active duty on the day before the effective date of the Act and who is retired under proposed new chapter 36 to retired pay in an amount equal to not less than 50 percent of his basic pay notwithstanding that he may have less than 20 years of active service.

Subsection 626(c) of the Act would define service in grade of an officer who holds the same grade before and after the effective date of the Act. Service in a particular grade is the sum of the years, months, and days accrued under laws in effect before the effective date of the Act and the years, months, and days accrued after the effective date of the Act.

Transition to officer grade-strength tables during fiscal year 1981 (section 627)

Section 627 of the Act is designed to provide an orderly transition from the numbers of officers in pay grades 0–6, 0–5 and 0–4 actually serving on active duty in each military department at the end of fiscal year 1980 and the somewhat lower authorizations that the Act would provide. The formulas for calculating the number authorized for the end of fiscal year 1981, contained in the proposed section, would provide authorizations approximately half-way between current strengths and the numbers that would be authorized under the Act for the fiscal year ending on September 30, 1982.

Right of commissioned officers with permanent enlisted or warrant officer status to retire in highest enlisted or warrant officer grade held (section 628)

Section 628 of the Act would determine the retirement status of a commissioned officer with permanent status as an enlisted member or warrant officer who is serving under a temporary appointment. This section provides that such an officer, who is unable to complete the 10 years of commissioned service to qualify for retirement in his commissioned grade under current law shall retain his entitlement to retire in the highest permanent enlisted or warrant officer status he formerly held, if he becomes eligible for retirement under any provision of law.

Savings provision for retired grade for officers not subsequently promoted (section 629)

Section 629 of the Act would protect the entitlement (established under regulations) of an officer on active duty on the day before the effective date of the Act to the retired grade that he would have received under current law (two years). This would not apply to an officer promoted to a higher grade after the effective date of this Act or retired under the provisions of chapter 61 or chapter 67 of current law.

Exemption of certain officers from selective early retirement provisions (section 630)

Section 630 of the Act would provide that an officer of a military service who has been recommended for continuation under Public Law 86–155 (73 Stat. 333) or section 10 of Public Law 86–816 (76 Stat. 395) shall be considered to have been recommended for continuation on the active-duty list under the proposed new section 637. The cited provisions of law permit the selective continuation and early retirement of certain officers. Having been selected for continuation under those provisions, these officers would be permitted to remain on active duty as if selected for continuation under the proposed new section 637.

Savings provision for entitlement to readjustment pay or severance Pay under prior provisions of law (section 631)

Section 631 of the Act would provide that a member of a military service who is serving on active duty (other than for training) on the day before the effective date of the Act, and who is later involuntarily discharged or released from active duty, is entitled, at his election to (1) any readjustment payment or severance pay to which he would have been entitled under laws in effect before the effective date of the Act, or (2) if qualified, to the separation payment provided by the proposed new section 1174.

Officers on active duty in grade above general (section 632)

Section 632 of the Act would provide that section 1251 of title 10, United States Code, as added by this Act, relating to mandatory retirement for age, would not apply to any officer who on the effective date of this Act was on active duty in a grade above general.

Definitions (section 633)

Section 633 of this Act would provide that, for the purposes of title 10, United States Code, the term "officer" does not include warrant officers. It would also provide that the term "active-duty list" means the active-duty list that would be established by the Secretaries of the military departments in accordance with the proposed new section 620.

PART D—ADJUSTMENTS TO TRANSITION PROVISIONS FOR HEALTH PROFESSIONALS SPECIAL PAY

Preservation of entitlement for Reserve medical officers (section 641)

Section 641 of the Act would preserve special pay received by certain Reserve medical officers between May 6, 1974, and June 30, 1980.

Preservation of level of pay for senior dental officer (section 642)

Section 642 of the Act would add language to preclude the loss of entitlement to special pay for senior dental officers of the services.

TITLE VII—EFFECTIVE DATES AND GENERAL SAVINGS PROVISIONS

Effective dates (section 701)

Section 701 of the Act would provide the various dates on which the provisions of the Act will become effective.

Subsection 701(a) would set August 1, 1981, as the general effective date of the act.

Subsection 701(b) would provide particular effective dates for those provisions that for various reasons should not have efficacy on the same date as that prescribed in subsection (a) for the Act in general.

Preservation of suspended status of law in suspended status on effective date (section 702)

Section 702 of the Act would provide that the status of any provision of law that is in suspension when the Act becomes effective and that is amended by the Act shall not be affected, insofar as its suspension is concerned, by the Act.

General savings provision (section 703)

Section 703 of the Act is a general savings provision that is intended to prevent the extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of the Act.

COMMITTEE POSITION

The Committee on Armed Services on September 30, 1980, a quorum being present, agreed to report S. 1918, as amended, by voice vote.

FISCAL DATA

Pursuant to the House rules, the five-year cost projection of the legislation as estimated by the Department of Defense, the Armed Services Committee and the Congressional Budget Office follows:

DEPARTMENTAL COST ESTIMATE

Following are the estimated outlays that would result from the enactment of S. 1918, as amended by the committee, for fiscal year 1981 and the four following fiscal years as provided by the Department of Defense:

Outlays

Fiscal year:	*Millions*
1981	−$10.2
1982	−98.2
1983	−138.2
1984	−121.6
1985	−129.5

COMMITTEE COST ESTIMATE

Pursuant to clause 7, rule XIII of the Rules o fthe House of Representatives, the committee attempted to determine outlays resulting from the bill for fiscal year 1981 and the four following fiscal years.

The committee concurs with the estimate of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

In compliance with clause 2(1)(3)(C), rule XI of the Rules of the House of Representatives, the estimate prepared by the Congressional Budget Office and submitted pursuant to section 403 of the Congressional Budget Act of 1974 is included hereafter:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

November 12, 1980.

1. Bill number: S. 1918.
2. Bill title: Defense Officer Personnel Management Act.
3. Bill status: As ordered reported by the House Committee on Armed Services on September 30, 1980.
4. Bill purpose: This bill amends Titles 10 and 37 of the United

States Code, relating to the appointment, promotion, separation, and retirement of officers of the military services.

5. Cost estimate:

[By fiscal year, in millions of dollars]

	1981	1982	1983	1984	1985
Estimated authorization amount:					
DOPMA[1]	−10.3	−107.8	−165.5	−159.1	−182.3
Per diem amendment	1.8	43.8	46.1	48.7	51.3
Net savings	−8.5	−64.0	−119.4	−110.4	−131.0
Estimated outlays:					
DOPMA	−10.1	−105.8	−164.4	−159.2	−181.9
Per diem amendment	1.8	42.9	46.1	48.6	51.3
Net savings	−8.3	−62.9	−118.3	−110.6	−130.6

[1] The bill includes 2 "save pay" provisions whose costs are not estimated to be significant.

The costs of this bill fall within function 050.

6. Basis of estimate: This estimate is based on a DoD officer personnel model that computes the annual cost of alternative force profiles, considering both grade and years of service. The estimate on the table shows the net difference in costs (after adjustment for future price increases) between this bill and current policy over the next five years.

While this bill makes a number of policy changes, three provisions will alter the force profiles and their attendant costs:

The selective continuation of captains and majors who would normally be separated for retired sooner under current law. Under the bill's provisions, captains not promoted and currently separated by their 15th year of service may remain until 20 years. Also, majors not promoted and currently retired at 20 years may be retained through 24 years of service.

A shift in the grade distribution that allows 5 percent fewer officers serving in the senior grades O-4 through O-6) than current law permits. The bill requires that these limitations on senior grade officers be achieved within two years after enactment.

An increase in the maximum separation pay from $15,000 to $30,000. Officers involuntarily separated receive this payment.

Savings over the first five years can be attributed primarily to the selective continuation policy in the bill. This estimate assumes that 50 percent of eligible captains and majors choose to continue service through 20 and 24 years, respectively. The continuation of some captains and majors defers the cost of procuring their replacements and avoids retirement costs while they remain on active duty. The yearly variance in savings can be attributed primarily to the size of the year groups affected by the selective continuation provision in the bill. Because the bill specifies that its provisions do not take effect until August 1, 1981, minimal savings appear in fiscal year 1981.

Over the long run, however, no savings can be attributed to the bill's provisions. The slightly reduced average grade and turnover of the officer force under the selective continuation policy generates some savings in basic pay and manpower procurement costs. But these savings are offset by the increased cost of retirement for some captains now permitted to stay for 20 years. S. 1918 includes an amendment allowing enlisted personnel on temporary duty to receive both the basic allowance for subsistence and the per diem allowance. Officers on temporary duty are currently entitled to both benefits. The effective date of this amendment is September 15, 1980.

7. Estimate comparison: The Department of Defense (DoD) has not prepared an official estimate of the costs of this bill. This estimate was prepared using a DoD model with CBO assumptions.

8. Previous CBO estimate: In recent years, CBO has prepared estimates for other versions of the Defense Officer Personnel Management Act. The most recent was for S. 1186 in October 1979. Estimates were also prepared for H.R. 13958 in June 1976 and H.R. 5503 in August 1977.

While the provisions in these bills differ somewhat from S. 1918, the methodology and assumptions used for costing purposes are the same.

Inflation-Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the committee examined the possible inflationary impact of the bill. It is the belief of the committee that the enactment of this legislation will not have an inflationary impact on the economy of the United States.

Oversight Findings

With reference to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the committee has not received a report from the Committee on Government Operations in regard to this matter.

With reference to clause 2(b)(1) of rule X of the Rules of the House of Representatives, the committee finds and recommends that the legislation be enacted pursuant to its oversight responsibilities.

Bill Summary

PURPOSE

The purpose of the bill is to revise the laws that govern the management of the commissioned-officer active-duty force. The bill would:

- —Establish new statutory limitations on the number of officers who may serve in senior grades below flag and general officer rank;
- —Provide common law for the appointment of regular officers and for the active-duty service of Reserve officers;
- —Provide uniform laws for promotion procedures for officers in the separate services;
- —Establish common provisions governing career expectation in the various grades; and
- —Establish common mandatory separation and retirement points for Regular commissioned officers.

FISCAL DATA

The Congressional Budget Office estiamtes that enactment of S. 1918 as reported by the committee will result in reduction of outlays of $—— million in fiscal year 1981. Reduction of outlays will continue during each of the following four fiscal years achieving a reduction of $—— million in fiscal year 1984.

The Department of Defense estimate is consistent with that of the Congressional Budget Office.

The committee concurs in the estimate of the Congressional Budget Office.

DEPARTMENTAL POSITION

The Department of Defense strongly supports the bill as reported by the committee.

COMMITTEE POSITION

The Committee on Armed Services, on September 30, 1980, a quorum being present, agreed to report S. 1918, as amended, by voice vote.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 10, UNITED STATES CODE

SUBTITLE		Sec.
A.	GENERAL MILITARY LAW	101
B.	ARMY	3001
C.	NAVY AND MARINE CORPS	5001
D.	AIR FORCE	8001

Subtitle A—General Military Law

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63.	Retirement for Age	[1255] *1251*

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PART I—ORGANIZATION AND GENERAL MILITARY POWERS

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CHAPTER 1—DEFINITIONS

Sec.
101. Definitions.

§ 101. Definitions.

In addition to the definitions in sections 1-5 of title 1, the following definitions apply in this title:

(1) * * *

* * * * * * *

(22) "Active duty" means full-time duty in the active military service of the United States. It includes **[**duty on the active-list,**]** full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

* * * * * * *

[(36) "Dependent", with respect to a female member of an armed force, does not include her husband, unless he is in fact dependent on her for his chief support, or her child, unless his father is dead or he is in fact dependent on her for his chief support.**]**

(37) "Active-duty list" means a single list for the Army, Navy, Air Force, or Marine Corps (required to be maintained under section 620 of this title) which contains the names of all officers of that armed force, other than officers described in section 641 of this title, who are serving on active duty.

(38) "Medical officer" means an officer of the Medical Corps of the Army, an officer of the Medical Corps of the Navy, or an officer in the Air Force designated as a medical officer.

(39) "Dental officer" means an officer of the Dental Corps of the Army, an officer of the Dental Corps of the Navy, or an officer of the Air Force designated as a dental officer.

(40) "General officer" means an officer of the Army, Air Force, or Marine Corps serving in or having the grade of general, lieutenant general, major general, or brigadier general.

(41) "Flag officer" means an officer of the Navy serving in or having the grade of admiral, vice admiral, rear admiral, or commodore admiral.".

* * * * * * *

CHAPTER 3—GENERAL POWERS

* * * * * * *

§ 123. Suspension of certain provisions of law relating to reserve commissioned officers

(a) In time of war, or of national emergency declared by Congress, the President may suspend the operation of any provision of the following sections of this title with respect to any armed force: 281, 592, 1002, 1005, 1006, 1007, 1374, 3217, 3218, 3219, 3220, 3352(a) (last sentence), 3353, 3354, 3359, 3360, 3362, 3363, 3364, 3365, 3366, 3367, 3368, 3369, 3370, 3371, 3375, 3378, 3380, 3382, 3383, 3384, 3385, 3386, 3388, 3389, 3390, 3392, 3393, 3494, [3571,] 3819, 3820(c), 3843, 3844, 3845, 3846, [3847,] 3848, 3850, 3851, 3852, 3853, 3854, 3855, 5414, 5457, 5458, 5506, 5600, 5665, [5867,] 5891, 5892, 5893, 5894, 5895, 5896, 5897, 5898, 5899, 5900, 5901, 5902, 5903, 5904, 5905, 5906, 5908, 5909, 5910, 5911, 6389, 6391, 6397, 6403, 6410, 8217, 8218, 8219, 8353, 8354, 8358, 8359, 8360, 8361, 8362, 8363, 8365, 8366, 8367, 8368, [8370,] 8371, 8372, 8373, 8374, 8375, 8376, 8377, 8378, 8379, 8380, 8381, 8392, 8393, 8494, [8571,] 8819, 8843, 8844, 8845, 8846, [8847,] 8848, 8850, 8851, 8852, 8853, and 8855.

(b) If a provision is so suspended, the Secretary of Defense shall, before the end of that suspension, recommend to Congress legislation necessary to adjust the grades of reserve commissioned officers other than commissioned warrant officers. So far as practicable, this legislation shall be the same as that recommended for adjusting the grades of officers of the regular component of the armed force concerned.

* * * * * * *

§ 126. Transfer of funds and employees

(a) * * *

(b) When a function, power, or duty or an activity of a department or agency of the Department of Defense is transferred to another department or agency of that department, those civilian employees of the department or agency from which the transfer is made that the Secretary of Defense determines are needed to perform that function, power, or duty, or for that activity, as the case may be, may, with the approval of the [Director of the Bureau of the Budget] *President,* be transferred to the department or agency to which that function, power, duty, or activity, as the case may be, is transferred. The authorized strength in civilian employees of a department or agency from which employees are transferred under this section is reduced by the number of employees so transferred. The authorized strength in civilian employees of a department or agency to which employees are transferred under this section is increased by the number of employees so transferred.

* * * * * * *

CHAPTER 4—DEPARTMENT OF DEFENSE

* * * * * * *

§ 133. Secretary of Defense: appointment; powers and duties; delegation by

(a) * * *

(b) The Secretary is the principal assistant to the President in all matters relating to the Department of Defense. Subject to the direction of the President and to this title and section [401 of title 50] *2 of the National Security Act of 1947 (50 U.S.C. 401)*, he has authority, direction, and control over the Department of Defense.

* * * * * * *

§ 138. Annual authorization of appropriations and personnel strengths for the armed forces; annual manpower requirements and operations and maintenance reports

(a) * * *

* * * * * * *

(c)(1)*(A)* Congress shall authorize the end strength as of the end of each fiscal year for active-duty personnel for each component of the armed forces. No funds may be appropriated for any fiscal year to or for the use of the active-duty personnel of any component of the armed forces unless the end strength for active-duty personnel of that component for that fiscal year has been authorized by law.

(B) In counting active-duty personnel for the purpose of the end-strengths authorized pursuant to subparagraph (A), persons in the following categories shall be excluded:

(i) Members of the Ready Reserve ordered to active duty under section 673 of this title.

(ii) Members of the Selected Reserve of the Ready Reserve ordered to active duty under section 673b of this title.

(iii) Members of the National Guard called into Federal service under section 3500 or 8500 of this title.

(iv) Members of the militia called into Federal service under chapter 15 of this title.

(v) Members of reserve components on active duty for training for 180 days or less.

(vi) Members of reserve components on active duty for 180 days or less to perform special work.

(C) The authorized strength of the Navy is increased by the authorized strength of the Coast Guard during any period when the Coast Guard is operating as a service in the Navy.

* * * * * * *

(3)(A) * * *

* * * * * * *

[(D) The Secretary of Defense shall also include in such report with respect to each armed force under the jurisdiction of the Secretary of a military department—

[(i) the estimated requirements in members on active duty during the next fiscal year;

[(ii) the estimated number of commissioned officers in each grade on active duty and to be promoted during the next fiscal year; and

[(iii) an analysis of the distribution by grade of commissioned officers on active duty at the time the report is prepared.**]**

(D) The Secretary of Defense shall also include in such report with respect to each armed force under the jurisdiction of the Secretary of a military department—

(i) the number of positions that require warrant officers or commissioned officers serving on active duty in each of the officer grades during the current fiscal year and the estimated number of such positions for each of the next five fiscal years;

(ii) the estimated number of officers that will be serving on active duty in each grade on the last day of the current fiscal year and the estimated numbers of officers that will be needed on active duty on the last day of each of the next five fiscal years;

(iii) an estimate and analysis for the current fiscal year and for each of the next five fiscal years of gains to and losses from the number of members on active duty in each officer grade, including a tabulation of—

(I) retirements displayed by year of active commissioned service and active military service;

(II) discharges;

(III) other separations;

(IV) deaths;

(V) promotions; and

(VI) reserve and regular officers ordered to active duty; and

(iv) an analysis of the distribution of each of the following categories of officers serving on active duty on the last day of the preceding fiscal year by grade in which serving and years of active commissioned service:

(I) Regular officers.

(II) Reserve officers on the active-duty list.

(III) Reserve officers described in clauses (B) and (C) of section 523(b)(1) of this title.

(IV) Officers other than those specified in subclauses (I), (II), and (III) serving in a temporary grade.

* * * * * * *

(f)(1) In subsection (a)(6), the term "military construction" includes any construction, development, conversion, or extension of any kind which is carried out with respect to any military facility or installation (including any Government-owned or Government-leased industrial facility used for the production of defense articles and any facility to which section 2353 of this title applies) but excludes any activity to which section 2673 or 2674, or chapter 133, of this title apply, or to which section 406(a) of Public Law 85-241 **[**(71 Stat. 556)**]** *(42 U.S.C. 1594i)* applies.

(2) In subsection **[**(f)**]** *(e)*:

(A) "Combat arms battalions" means armor, infantry, mechanized infantry, air assault infantry, airborne infantry, ranger, artillery, and combat engineer battalions and armored cavalry and air cavalry squadrons.

(B) "Major repair work" means, in the case of any ship to which such subsection is applicable, any overhaul, modification, alternation, or conversion work which will result in a total cost to the United States of more than $10,000,000.

§ 139. Secretary of Defense: weapons development and procurement schedules for armed forces; reports; supplemental reports

(a) The Secretary of Defense shall submit to Congress each calendar year, at the same time the President submits the budget to Congress under section **[**11 of title 31,**]** *201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11),* a written report regarding development and procurement schedules for each weapon system for which fund authorization is required by section 138(a) of this title, and for which any funds for procurement are requested in that budget. The report shall include data on operational testing and evaluation for each weapon system for which funds for procurement are requested (other than funds requested only for the procurement of units for operational testing and evaluation, or long lead-time items, or both). A weapon system shall also be included in the annual report required under this subsection in each year thereafter until procurement of that system has been completed or terminated, or the Secretary of Defense certifies, in writing, that such inclusion would not serve any useful purpose and gives his reasons therefor.

* * * * * * *

CHAPTER 7—BOARDS, COUNCILS, AND COMMITTEES

* * * * * * *

§ 176. Armed Forces Institute of Pathology

(a)(1) * * *

* * * * * * *

(3) The Board of Governors shall consist of the Assistant Secretary of Defense for Health Affairs, who shall serve as chairman of the Board of Governors, the Assistant Secretary of Health**[**, Education, and Welfare**]** *and Human Services* for Health, the Surgeons General of the Army, Navy, and Air Force, the Chief Medical Director of the Veterans' Administration, and a former Director of the Institute, as designated by the Secretary of Defense, or the designee of any of the foregoing.

* * * * * * *

(b)(1) In carrying out the provisions of this section, the Institute is authorized to—

(A) contract with the American Registry of Pathology (established under section 177 *of this title*) for cooperative enterprises in medical research, consultation, and education between the Institute and the civilian medical profession under such conditions as may be agreed upon between the Board of Governors and the American Registery of Pathology;

* * * * * * *

CHAPTER 11—RESERVE COMPONENTS

* * * * * * *

§ 266. Boards for appointment, promotion, and certain other purposes: composition

(a) **[***Each***]** *Except as provided in section 612(a)(3) of this title, each* board convened for the appointment, promotion, demotion, involuntary release from active duty, discharge, or retirement of Reserves shall include an appropriate number of Reserves, as prescribed by the Secretary concerned under standards and policies prescribed by the Secretary of Defense.

* * * * * * *

§ 270. Ready Reserve: training requirements

(a) Except as specifically provided in regulations to be prescribed by the Secretary of Defense, or by the Secretary of **[**the Treasury**]** *Transportation* with respect to the Coast Guard when it is not operating as a service in the Navy, each person who is inducted, enlisted, or appointed in an armed force after August 9, 1955, and who becomes a member of the Ready Reserve under any provision of law except section 269(b) of this title, shall be required, while in the Ready Reserve, to—

(1) participate in at least 48 scheduled drills or training periods during each year and serve on active duty for training of not less than 14 days (exclusive of traveltime) during each year;

(2) serve on active duty for training not more than 30 days during each year.

However, no member who has served on active duty for one year or longer shall be required to perform a period of active duty for training if the first day of such period falls during the last one hundred and twenty days of his required membership in the Ready Reserve.

(c) Any person who becomes a member of the Army National Guard of the United States or the Air National Guard of the United States after **[**the enactment of this subsection**]** *October 4, 1961* and who fails in any year to perform satisfactorily the training duty prescribed by or under law for members of the Army National Guard or the Air National Guard, as the case may be, as determined by the Secretary concerned, may, upon the request of the Governor of the State or territory, Puerto Rico, or the Canal Zone, or the commanding general of the District of Columbia National Guard, whichever is concerned, be ordered, without his consent, to perform additional active duty for training for not more than forty-five days. A member ordered to active duty under this subsection shall be ordered to duty as a Reserve of the Army or as a Reserve of the Air Force, as the case may be.

* * * * * * *

§ 272. Ready Reserve: transfer back from Standby Reserve

Under regulations to be prescribed by the Secretary of Defense, or by the Secretary of **[**the Treasury**]** *Transportation* with respect to the Coast Guard when it is not operating as a service in the

Navy, a member of the Standby Reserve who has not completed his required period of service in the Ready Reserve may be transferred to the Ready Reserve when the reason for his transfer to the Standby Reserve no longer exists.

* * * * * * *

§ 274. Retired Reserve

The Retired Reserve consists of Reserves—

(1) who are or have been retired under section 3911, 6323, or 8911 of this title or under section [232] *291* of title 14; or

* * * * * * *

§ 280. Regulations

Subject to standards, policies, and procedures prescribed by the Secretary of Defense, the Secretary of each military department shall prescribe such regulations as he considers necessary to carry out chapters 11, [35] *34*, 39, and 59, and sections 715, 1003, 1004, 1376, 2001, 2511, 3077, 3079, 3221, 3224, 3259, 3260, 3261, 3351, 3352, 3354, 3495, 3498, [3685,] 3686, 5251, 5252, 5456, 5597, 6327, 6483, 7225, 7226, 7854, 8077, 8079, 8221, 8224, 8259, 8260, 8261, 8351, 8352, 8354, 8495, 8498, [8685,] and 8686 of this title. The Secretary of [the Treasury,] *Transportation*, with the concurrence of the Secretary of the Navy, shall prescribe such regulations as he considers necessary to carry out chapters 11, [35,] *34*, 39, and 59, and sections 715, 1003, 1004, 1376, 2001, and 2511 of this title, so far as they relate to the Coast Guard, except when the Coast Guard is operating as a service in the Navy. So far as practicable, regulations for all reserve components shall be uniform.

* * * * * * *

CHAPTER 15—INSURRECTION

Sec.
331. Federal aid for State governments.
332. Use of militia and armed forces to enforce Federal authority.
333. Interference with State and Federal law.
334. Proclamation to disperse.
335. Guam and Virgin Islands included as "State".

* * * * * * *

[§ 335. Guam included as "State"

[For purposes of this chapter, "State" includes the unincorporated territory of Guam.

[§ 336. Virgin Islands included as "State"

[For the purposes of this chapter, "State" includes the unincorporated territory of the Virgin Islands.]

§ 335. Guam and Virgin Islands included as "State"

For purposes of this chapter, the term "State" includes the unincorporated territories of Guam and the Virgin Islands.

CHAPTER 17—ARMING OF AMERICAN VESSELS

* * * * * * *

§ 351. During war or threat to national security

(a) * * *

* * * * * * *

(c) Section [463 of title 22] *16 of the Act of March 4, 1909 (22 U.S.C. 463)* does not apply to vessels armed under this section.

PART II—PERSONNEL

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32.	*Officer Strength and Distribution in Grade*	*521*
33.	Appointments in Regular Components	[541] *531*
[35] *34.*	Appointments as Reserve Officers	591
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65.	Retirement *of Warrant Officers* for Length of Service	1293
67.	Retired Pay for Non-Regular Service	1331
69.	Retired Grade	[1371] *1370*
71.	Computation of Retired Pay	1401
73.	Annuities Based on Retired or Retainer Pay[; Survivor Benefit Plan]	1431
75.	Death Benefits	1475
77.	Posthumous Commissions and Warrants	1521
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81.	Civilian Employees	1581

* * * * * * *

CHAPTER 31—ENLISTMENTS

* * * * * * *

§ 510. Reserve components: qualifications

(a) * * *

(b) Except as otherwise provided by law, the Secretary concerned shall prescribe physical, mental, moral, professional, and age qualifications for the enlistment of persons as Reserves of the armed forces under his jurisdiction. However, no person may be enlisted as a Reserve unless—

(1) he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under [chapter 12 of title 8] *the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)*; or

* * * * * * *

§511. Reserve components: terms

(a) * * *

* * * * * * *

(d) Under regulations to be prescribed by the Secretary of Defense, or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a non-prior-service person who is qualified for induction for active duty in an armed force and who is not under orders to report for induction into an armed force under the Military Selective Service Act [of 1967 (50 App. U.S.C. 451-473)] *(50 U.S.C. App. 451 et seq.)*, except as provided in section 6(c)(2)(A)(ii) and (iii) of such Act, may be enlisted in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve, for a term of six years. Each person enlisted under this subsection shall perform and initial period of active duty for training of not less than twelve weeks to commence insofar as practicable within 180 days after the date of that enlistment.

§512. Reserve components: transfers

(a) A person who would otherwise be required to be transferred to a reserve component under section 651 of this title or under [sections 451-473 of title 50, appendix] *the Military Selective Service Act (50 U.S.C. App. 451 et seq.)*, is entitled, if he is qualified and accepted, to be enlisted in any armed force that he chooses and to participate in the programs authorized for that armed force. However, unless the two Secretaries concerned consent, he may not be enlisted as a Reserve of an armed force other than that from which is transferred. All periods of his participation shall be credited against the total period of service required of him under section 651 of this title or under [sections 451-473 of title 50, appendix] *the Military Selective Service Act (50 U.S.C. App. 451 et seq.)*. However, no period may be credited more than once.

* * * * * * *

CHAPTER 32—OFFICER STRENGTH AND DISTRIBUTION IN GRADE

Sec.

521. Authority to prescribe total strengths of officers on active duty and officer strengths in various categories.

522. Authorized total strengths: regular commissioned officers on active duty.

523. Authorized strengths: commissioned officers on active duty in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain.

524. Authorized strengths: reserve officers on active duty for administration of the reserves in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain.

525. Distribution of commissioned officers on active duty in general officer and flag officer grades.
526. Authority to suspend sections 523, 524, and 525.

§521. Authority to prescribe total strengths of officers on active duty and officer strengths in various categories

(a) Whenever the needs of the services require, but at least once each fiscal year, the Secretary of Defense shall prescribe the total authorized active-duty strength as of the end of the fiscal year for officers in grades above warrant officer (W-4) for each of the armed forces under the jurisdiction of the Secretary of a military department.

(b) Under regulations prescribed by the Secretary of Defense, the Secretary of each military department may, for an armed force under his jurisdiction, prescribe the strength of any category of officers that may serve on active duty.

§522. Authorized total strengths: regular commissioned officers on active duty

The authorized strengths of the Army, Navy, Air Force, and Marine Corps in regular officers (other than retired officers) in grades above chief warrant officer (W-4) are as follows:

Army	*63,000*
Navy	*48,000*
Air Force	*69,425*
Marine Corps	*13,000*

§523. Authorized strengths: commissioned officers on active duty in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain

(a)(1) Except as provided in subsection (c), of the total number of commissioned officers serving on active duty in the Army, Air Force, or Marine Corps at the end of any fiscal year (excluding officers in categories specified in subsection (b)), the number of officers who may be serving on active duty in each of the grades of major, lieutenant colonel, and colonel may not, as of the end of such fiscal year, exceed a number determined in accordance with the following table:

Total number of commissioned officers (excluding officers in categories specified in subsection (b)) on active duty	*Number of officers who may be serving on active duty in the grade of:*		
	Major	*Lieutenant colonel*	*Colonel*
Army:			
60,000	*11,580*	*7,941*	*3,080*
65,000	*12,271*	*8,330*	*3,264*
70,000	*12,963*	*8,718*	*3,447*
75,000	*13,654*	*9,107*	*3,631*
80,000	*14,346*	*9,495*	*3,814*
85,000	*15,037*	*9,884*	*3,997*
90,000	*15,729*	*10,272*	*4,181*
95,000	*16,420*	*10,661*	*4,364*
100,000	*17,112*	*11,049*	*4,548*

Total number of commissioned officers (excluding officers in categories specified in subsection (b)) on active duty	*Number of officers who may be serving on active duty in the grade of:*		
	Major	*Lieutenant colonel*	*Colonel*
Army:—Continued			
110,000	*18,495*	*11,826*	*4,915*
120,000	*19,878*	*12,603*	*5,281*
130,000	*21,261*	*13,380*	*5,648*
170,000	*26,793*	*16,488*	*7,116*
Air Force:			
70,000	*13,530*	*9,428*	*3,642*
75,000	*14,266*	*9,801*	*3,823*
80,000	*15,002*	*10,175*	*4,004*
85,000	*15,738*	*10,549*	*4,185*
90,000	*16,474*	*10,923*	*4,365*
95,000	*17,210*	*11,297*	*4,546*
100,000	*17,946*	*11,671*	*4,727*
105,000	*18,682*	*12,045*	*4,908*
110,000	*19,418*	*12,418*	*5,088*
115,000	*20,154*	*12,792*	*5,269*
120,000	*20,890*	*13,165*	*5,450*
125,000	*21,626*	*13,539*	*5,631*
Marine Corps:			
12,500	*2,499*	*1,388*	*592*
15,000	*2,717*	*1,483*	*613*
17,500	*2,936*	*1,579*	*633*
20,000	*3,154*	*1,674*	*654*
22,500	*3,373*	*1,770*	*675*
25,000	*3,591*	*1,865*	*695*

(2) Except as provided in subsection (c), of the total number of commissioned officers serving on active duty in the Navy at the end of any fiscal year (excluding officers in categories specified in subsection (b)), the number of officers who may be serving on active duty in each of the grades of lieutenant commander, commander, and captain may not, as of the end of such fiscal year, exceed a number determined in accordance with the following table:

Total number of commissioned officers (excluding officers in categories specified in subsection (b)) on active duty	*Number of officers who may be serving on active duty in grade of:*		
	Lieutenant commander	*Commander*	*Captain*
Navy:			
45,000	*9,124*	*5,776*	*2,501*
48,000	*9,565*	*5,984*	*2,602*
51,000	*10,006*	*6,190*	*2,702*
54,000	*10,447*	*6,398*	*2,803*
57,000	*10,888*	*6,606*	*2,904*
60,000	*11,329*	*6,813*	*3,005*
63,000	*11,770*	*7,020*	*3,106*
66,000	*12,211*	*7,227*	*3,206*

Total number of commissioned officers (excluding officers in categories specified in subsection (b)) on active duty	*Number of officers who may be serving on active duty in grade of:*		
	Lieutenant commander	*Commander*	*Captain*
70,000	*12,799*	*7,504*	*3,341*
90,000	*15,739*	*8,886*	*4,013*

(3) If the total number of commissioned officers serving on active duty in an armed force (excluding officers in categories specified in subsection (b)) is between any two consecutive figures listed in the first column of the appropriate table in paragraph (1) or (2), the corresponding authorized strengths for each of the grades shown in that table for that armed force are determined by mathematical interpolation between the respective numbers of the two strengths. If the total number of commissioned officers serving on active duty in an armed force (excluding officers in categories specified in subsection (b)) is greater or less than the figures listed in the first column of the appropriate table in paragraph (1) or (2), the Secretary concerned shall fix the corresponding strengths for the grades shown in that table in the same proportion as reflected in the nearest limit shown in the table.

(b) Officers in the following categories shall be excluded in computing and determining authorized strengths under this section:

(1) Reserve officers—

(A) on active duty for training;

(B) on active duty under section 265, 3033, 3496, 5251, 5252, 8033, or 8496 of this title or under section 708 of title 32;

(C) on active duty under section 672(d) of this title or section or section 502 or 503 of title 32 in connection with organizing, administering, recruiting, instructing, or training the reserve components;

(D) on active duty to pursue special work; or

(E) ordered to active duty under section 673b of this title.

(2) General and flag officers.

(3) Medical officers.

(4) Dental officers.

(5) Warrant officers.

(6) Retired officers on active duty under a call or order to active duty for 180 days or less.

(7) Reserve or retired officers on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System.

(c) Whenever the number of officers serving in any grade is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for any lower grade.

(d) An officer may not be reduced in grade, or have his pay or allowances reduced, because of a reduction in the number of commissioned officers authorized for his grade under this section.

§ 524. Authorized strengths: reserve officers on active duty for administration of the reserves in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain

(a) The number of reserve officers of the Army, Air Force, and Marine Corps who may be on active duty in each of the grades of major, lieutenant colonel, and colonel, and of the Navy who may be on active duty in each of the grades of lieutenant commander, commander, and captain, as of the end of any fiscal year for duty described in subclauses (B) and (C) of section 523(b)(1) of this title may not exceed the number for that grade and armed force in the following table:

Grade	Army	Navy	Air Force	Marine Corps
Major or lieutenant commander	*821*	*823*	*170*	*51*
Lieutenant colonel or commander	*503*	*425*	*183*	*35*
Colonel or Navy captain	*163*	*177*	*146*	*19*

(b) Whenever the number of officers serving in any grade is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for any lower grade.

§ 525. Distribution of commissioned officers on active duty in general officer and flag officer grades

(a) No appointment may be made in a grade above brigadier general in the Army, Air Force, or Marine Corps if that appointment would result in more than 50 percent of the general officers of that armed force on active duty being in grades above brigadier general. No appointment may be made in a grade above commmodore admiral in the Navy if that appointment would result in more than 50 percent of the flag officers of the Navy on active duty being in grades above commodore admiral.

(b)(1) No appointment may be made in a grade above major general in the Army, Air Force, or marine Corps if that appointment would result in more than 15 percent of the general officers of that armed force on active duty being in grades above major general. In the case of the Army and Air Force, of the 15 percent of general officers on active duty who may be serving in grades above major general, not more than 25 percent may be serving in the grade of general.

(2) No appointment may be made in a grade above rear admiral in the Navy if that appointment would result in more than 15 percent of the flag officers of the Navy on active duty being in grades above rear admiral. Of the 15 percent of flag officers on active duty who may be serving in grades above rear admiral, not more than 25 percent may be serving in the grade of admiral.

(3) An officer while serving as Chairman of the Joint Chiefs of Staff or as Chief of Staff to the President, if serving in the grade of general or admiral, is in addition to the number authorized his armed force for that grade under paragraph (1) or (2).

§ 526. Authority to suspend sections 523, 524, and 525

In time of war, or of national emergency declared by Congress or the President after November 30, 1980, the President may suspend the operation of any provision of section 523, 524, or 525 of this title. So long as such war or national emergency continues, any such suspension may be extended by the President. Any such suspension shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on the date of the termination of the war or national emergency, whichever occurs first. With respect to the end of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621-1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of the termination of the emergency.

CHAPTER 33—APPOINTMENTS IN REGULAR COMPONENTS

[Sec.
[541. Graduates of the United States Military, Naval, and Air Force Academies.
[555. Warrant officers: grades.
[556. Warrant officers: original appointment; service credit.
[557. Warrant officers: promotion; qualifications.
[558. Warrant officers: promotion; selection boards.
[559. Warrant officers: eligibility for promotion.
[560. Warrant officers: promotion; selection procedure.
[561. Warrant officers: effect of failure of selection for promotion.
[562. Warrant officers: disapproval of promotion by Secretary concerned, President, or Senate.
[563. Warrant officers: promotion; effective date.
[564. Warrant officers: effect of second failure of promotion.
[565. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency.]

Subchapter *Sec.*
I. Original Appointments of Regular Officers in Grades above Warrant Officer Grades *531*
II. Appointments of Regular Warrant Officers *555*

SUBCHAPTER I—ORIGINAL APPOINTMENTS OF REGULAR OFFICERS IN GRADES ABOVE WARRANT OFFICER GRADES

Sec.
531. Original appointments of commissioned officers.
532. Qualifications for original appointment as a commissioned officer.
533. Service credit upon original appointment as a commissioned officer.
541. Graduates of the United States Military, Naval, and Air Force Academies.

§ 531. Original appointments of commissioned officers

Original appointments in the grades of second lieutenant through colonel in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of ensign through captain in the Regular Navy shall be made by the President, by and with the advice and consent of the Senate.

§ 532. Qualifications for original appointment as commissioned officer

(a) Under regulations prescribed by the Secretary of Defense, an original appointment as a commissioned officer (other than as a

commissioned warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps may be given only to a person who—

(1) is a citizen of the United States;

(2) is able to complete 20 years of active commissioned service before his fifty-fifth birthday;

(3) is of good moral character;

(4) is physically qualified for active service; and

(5) has such other special qualifications as the Secretary of the military department concerned may prescribe by regulation.

(b)(1) Original appointments in the Regular Army in the Medical Corps or Dental Corps, and original appointments in the Regular Air Force with a view to designation of an officer as a medical or dental officer, may be made in the grades of first lieutenant through colonel. Original appointments in the Regular Navy in the Medical Corps or Dental Corps may be made in the grades of lieutenant (junior grade) through captain. Such appointments may be made only from persons who are qualified doctors of medicine, osteopathy, or dentistry.

(2) To be eligible for an original appointment as a medical officer, a doctor of osteopathy must—

(A) be a graduate of a college of osteopathy whose graduates are eligible to be licensed to practice medicine or surgery in a majority of the States;

(B) be licensed to practice medicine, surgery, or osteopathy in a State or in the District of Columbia;

(C) under regulations prescribed by the Secretary of Defense, have completed a number of years of osteopathic and preosteopathic education equal to the number of years of medical and premedical education prescribed for persons entering recognized schools of medicine who become doctors of medicine and who would be qualified for an original appointment in the grade for which that person is being considered for appointment; and

(D) have such other qualifications as the Secretary of the military department concerned prescribes after considering the recommendations, if any, of the Surgeon General of the armed force concerned.

(c) Original appointments in the Regular Navy or Regular Marine Corps of officers designated for limited duty shall be made under section 5589 or 5596 of this title.

(d) A person receiving an original appointment as a medical officer or dental officer or as a chaplain is not subject to clause (2) of subsection (a).

§533. Service credit upon original appointment as a commissioned officer

(a)(1) For the purpose of determining the grade and rank within grade of a person receiving an original appointment in a commissioned grade (other than a warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, such person shall be credited at the time of such appointment with any active commissioned service (other than service as a commissioned warrant officer) that he performed in any armed force before such appointment.

(2) The Secretary of Defense shall prescribe regulations, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, to authorize the Secretary of the military department concerned to limit the amount of prior active commissioned service with which a person receiving an original appointment may be credited under paragraph (1), or to deny any such credit, in the case of a person who at the time of such appointment is credited with constructive service under subsection (b).

(b)(1) Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned shall credit a person who is receiving an original appointment in a commissioned grade (other than a commissioned warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps and who has advanced education or training or special experience with constructive service for such education, training, or experience as follows:

(A) One year for each year of advanced education beyond the baccalaureate degree level, for persons appointed in officer categories requiring such advanced education or an advanced degree as a prerequisite for appointment as a commissioned officer. (Except as provided in clause (E), in determining the years of constructive service under this clause, the Secretary concerned shall grant credit for only the number of years normally required to complete the advanced education or receive the advanced degree.)

(B) Credit for any period of advanced education in a health profession (other than medicine and dentistry) beyond the baccalaureate degree level which exceeds the basic education criteria for appointment as an officer, if such advanced education will be directly used by the armed force concerned.

(C) Additional credit of (i) not more than one year for internship or equivalent graduate medical, dental, or other formal professional training required by the armed forces, and (ii) not more than one year for each additional year of such graduate-level training or experience creditable toward certification in a specialty required by the armed forces.

(D) Additional credit, in unusual cases, based on special experience in a particular field.

(E) Additional credit of one year for advanced education in a health profession if the number of years of baccalaureate education completed by 75 percent or more of the students entering advanced training in that health profession exceeds, by one or more, the minimum number of years of preprofessional education required by a majority of institutions which award degrees in that health profession. The percentage of such persons shall be computed on an annual basis for each health profession from the data for the year in which the person being appointed was admitted to a professional school. However, a person may not receive additional credit under this clause if the amount of his baccalaureate education does not exceed, by one or more, the minimum number of years of preprofessional education required by a majority of institutions which award degrees for that health profession, determined on the basis prescribed in the preceding sentence.

(F) Additional credit for experience as a physician or dentist, if appointed as a medical or dental officer in the Army or Navy or, in the case of the Air Force, with a view to designation as a medical or dental officer.

(2) Except as authorized by the Secretary concerned in individual cases and under regulations prescribed by the Secretary of Defense in the case of a medical or dental officer, the amount of constructive service credited an officer under this subsection may not exceed the amount required in order for the officer to be eligible for an original appointment in the grade of major in the Army, Air Force, or Marine Corps or lieutenant commander in the Navy.

(3) Constructive service credited an officer under this subsection is in addition to any service credited that officer under subsection (a) and shall be credited at the time of the original appointment of the officer.

(c) Constructive service credited an officer under subsection (b) shall be used only for determining the officer's—

(1) initial grade as a regular officer;

(2) rank in grade; and

(3) service in grade for promotion eligibility.

(d)(1) Constructive service may not be credited under subsection (b) for education, training, or experience obtained while serving as a commissioned officer (other than a warrant officer) on active duty or in an active status.

(2) A graduate of the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy is not entitled to service credit under this section for service performed, or education, training, or experience obtained, before graduation from such Academy.

(e) If the Secretary of Defense determines that the number of qualified judge advocates serving on active duty in the Army, Navy, Air Force, or Marine Corps in grades below major or lieutenant commander is critically below the number needed by such armed force in such grades, he may authorize the Secretary of the military department concerned to credit any person receiving an original appointment in the Judge Advocate General's Corps of the Army or Navy, or any person receiving an original appointment in the Air Force or Marine Corps with a view to designation as a judge advocate, with a period of constructive service in such an amount (in addition to any period of service credited such person under subsection (b)(1)) as will result in the grade of such person being that of captain or, in the case of an officer of the Navy, lieutenant and the date of rank of such person being junior to that of all other officers of the same grade serving on active duty.

(f) An officer of a reserve component who receives an original appointment as an officer (other than a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps shall be appointed in the grade and with the date of rank to which he would have been entitled had he been serving on active duty as an officer of a reserve component on the date of such original appointment as a regular officer.

§ 541. Graduates of the United States Military, Naval, and Air Force Academies

(a) Notwithstanding any other provision of law, each cadet at the United States Military Academy or the United States Air Force Academy, and each midshipman at the United States Naval Academy, is entitled, before graduating from that Academy, to state his preference for appointment, upon graduation, as a commissioned officer in either the Army, Navy, Air Force, or Marine Corps.

(b) With the consent of the Secretary of the military department administering the Academy from which the cadet or midshipman is to be graduated, and of the Secretary of the military department having jurisdiction over the armed force for which that graduate stated his preference, the graduate is entitled to be accepted for appointment in that armed force. However, not more than 12½ percent of any graduating class at an Academy may be appointed in armed forces not under the jurisdiction of the military department administering that Academy.

(c) The Secretary of Defense shall, by regulation, provide for the equitable distribution of appointments in cases where more than 12½ percent of the graduating class of any Academy request appointment in armed forces not under the jurisdiction of the military department administering that Academy.

SUBCHAPTER II—APPOINTMENTS OF REGULAR WARRANT OFFICERS

Sec.
555. Warrant officers: grades.
556. Warrant officers: original appointment; service credit.
557. Warrant officers: promotion; qualifications.
558. Warrant officers: promotion; selection boards.
559. Warrant officers: eligibility for promotion.
560. Warrant officers: promotion; selection procedure.
561. Warrant officers: effect of failure of selection for promotion.
562. Warrant officers: disapproval of promotion by Secretary concerned, President, or Senate.
563. Warrant officers: promotion; effective date.
564. Warrant officers: effect of second failure of promotion.
565. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war of emergency.

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§ 564. Warrant officers: effect of second failure of promotion

(a) Unless retired or separated under some other provision of law, a permanent regular warrant officer who has twice failed of selection for promotion to the next higher permanent regular warrant officer grade shall—

(1) * * *

* * * * * * *

(3) if he has less than 18 years of such active service on (A) the date when the Secretary concerned approves the report of the board under section 560(g) of this title, (B) the date when his name was removed from the recommended list under section 562(a) of this title, or (C) the date prescribed by the Secretary concerned under section 557(b) of this title, whichever applies, be separated 60 days after that date with *(1)* severance pay computed under section

[1167 of this title] *286a of title 14, or (2) separation pay computed under section 1174 of this title, as appropriate,* unless—

(A) upon his request and in the discretion of the Secretary concerned, he is enlisted in the grade prescribed by the Secretary; or

(B) he is serving on active duty in a grade above chief warrant officer, W-4, and elects, with the consent of the Secretary concerned, to remain on acitve duty in that status.

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CHAPTER [35] *34*—APPOINTMENTS AS RESERVE OFFICERS

Sec.
591. Reserve components qualifications.
592. Commissioned officer grades.
593. Commissioned officers: appointment, how made, term.
594. Commissioned officers: original appointment; limitation.
595. Officers: appointment upon transfer.
597. Warrant officers: grades; appointment, how made; term.
598. Warrant officers: promotion.
599. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency.
600. Officer candidates.

§ 591. Reserve components: qualifications

(a) * * *

(b) Except as otherwise provided by law, the Secretary concerned shall prescribe physical, mental, moral, professional, and age qualifications for the appointment of persons as Reserves of the armed forces under his jurisdiction. However, [except as provided in section 454(i)(7) of title 50, appendix,] no person may be appointed as a Reserve unless he is at least 18 years of age and—

(1) he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under [chapter 12 of title 8] *the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)*; or

(2) he has previously served in the armed forces or in the National Security Training Corps.

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§ 593. Commissioned officers: appointment, how made; term

(a) Appointments of Reserves in commissioned grades below lieutenant colonel and commander, except commissioned warrant officer, shall be made by the President alone. Appointments of Reserves in commissioned grades above major and lieutenant commander shall be made by the President, by and with the advice and consent of the Senate, except as provided in section [3352 or 8352] *624, 3352, or 8352* of this title.

§ 595. Officers appointment upon transfer

(a) A person who would otherwise be required to be transferred to a reserve component under section 651 of this title or under [sections 451-473 of title 50, appendix] *the Military Selective Service Act (50 U.S.C. App. 451 et seq.)*, is entitled, if he is qualified and accepted, to be appointed as an officer of any armed force that he chooses and to participate in the programs authorized for that armed force. However, unless the two Secretaries concerned consent, he may not be appointed as a Reserve of an armed force other than that from which he is transferred. All periods of his participation shall be credited against the total period of service required of him under section 651 of this title or under [sections 451-473 of title 50, appendix] *the Military Selective Service Act (50 U.S.C. App. 451 et seq.)*. However, no period may be credited more than once.

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CHAPTER 35—TEMPORARY APPOINTMENTS IN OFFICER GRADES

Sec.
601. Positions of importance and responsibility: generals and lieutenant generals; admirals and vice admirals.
602. Warrant officers: temporary promotions.
603. Commissioned officer grades: time of war or national emergency.

§ 601. Positions of importance and responsibility: generals and lieutenant generals; admirals and vice admirals

(a) The President may designate positions of importance and responsibility to carry the grade of general or admiral or lieutenant general or vice admiral. The President may assign to any such position an officer of the Army, Navy, Air Force, or Marine Corps who is serving on active duty in any grade above colonel or, in the case of an officer of the Navy, any grade above captain. An officer assigned to any such position has the grade specified for that position if he is appointed to that grade by the President, by and with the advice and consent of the Senate. Except as provided in subsection (b), the appointment of an officer to a grade under this section for service in a position of importance and responsibility ends on the date of the termination of the assignment of the officer to that position.

(b) If the assignment of an officer who is serving in a position designated to carry the grade of general, admiral, lieutenant general, or vice admiral is terminated—

(1) by the assignment of such officer to another position designated to carry one of those grades, such officer shall hold, during the period beginning on the day of that termination and ending on the day before the day on which he assumes the other position, the grade that he held on the day before the termination;

(2) by the hospitalization of such officer, such officer shall hold, during the period beginning on the day of that termination and ending on the day he is discharged from the hospital, but not for more than 180 days, the grade that he held on the day before the termination; or

(3) by the retirement of such officer, such officer shall hold, during the period beginning on the day of that termination and ending on the day before his retirement, but not for more than 90 days, the grade that he held on the day before the termination.

(c)(1) An appointment of an officer under subsection (a) does not vacate the permanent grade held by the officer.

(2) An officer serving in a grade above major general or rear admiral who holds the permanent grade of brigadier general or commodore admiral shall be considered for promotion to the permanent grade of major general or rear admiral, as appropriate, as if he were serving in his permanent grade.

§ 602. Warrant officers: temporary promotions

A warrant officer serving on active duty in the Army, Navy, Air Force, or Marine Corps may be given a temporary appointment to a higher warrant officer grade under such regulations as the Secretary of the military department concerned may prescribe.

§ 603. Commissioned officer grades: time of war or national emergency

(a) In time of war, or of national emergency declared by the Congress or the President after November 30, 1980, the President may appoint any qualified person (whether or not already a member of the armed forces) to any temporary commissioned officer grade in the Army, Navy, Air Force, or Marine Corps, except that appointments under this section may not be made in warrant officer grades or in grades above major general or rear admiral. Appointments under this section shall be made by the President alone.

(b) Any appointment under this section is a temporary appointment and may be vacated by the President at any time.

(c)(1) Any person receiving an original appointment under this section is entitled to service credit as authorized under section 533 of this title.

(2) An appointment under this section of a person who is not on active duty becomes effective when that person begins active duty under that appointment.

(d) An appointment under this section does not change the permanent status of a member of the armed forces so appointed. A member who is appointed under this section shall not incur any reduction in the pay and allowances to which the member was entitled, by virtue of his permanent status, at the time of his appointment under this section.

(e)(1) An officer who receives an appointment to a higher grade under this section is considered to have accepted such appointment on the date of the order announcing the appointment unless he expressly declines the appointment.

(2) An officer who has served continuously since he subscribed to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under this section.

(f) Unless sooner terminated, an appointment under this section terminates—

(1) on the second anniversary of the appointment;

(2) at the end of the six-month period beginning on the last day of the war or national emergency during which the appointment was made; or

(3) on the date the person appointed is released from active duty;

whichever is earliest.

CHAPTER 36—PROMOTION, SEPARATION, AND INVOLUNTARY RETIREMENT OF OFFICERS ON THE ACTIVE-DUTY LIST

Subchapter		*Sec.*
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SUBCHAPTER I—SELECTION BOARDS

Sec.
611. Convening of selection boards.
612. Composition of selection boards.
613. Oath of members of selection boards.
614. Notice of convening of selection boards; communications with boards.
615. Information furnished to selection boards.
616. Recommendations for promotion by selection boards.
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§ 611. Convening of selection boards

(a) Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned, whenever the needs of the service require, shall convene selection boards to recommend for promotion to the next higher permanent grade, under subchapter II of this chapter, officers on the active-duty list in each grade from first lieutenant through brigadier general in the Army, Air Force, or Marine Corps and from lieutenant (junior grade) through commodore admiral in the Navy.

(b) Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned, whenever the needs of the service require, may convene selection boards to recommend officers for continuation on active duty under section 637 of this title or for early retirement under section 638 of this title.

§ 612. Composition of selection boards

(a)(1) Members of selection boards shall be appointed by the Secretary of the military department concerned in accordance with this section. A selection board shall consist of five or more officers who are on the active-duty list of the same armed force as the officers under consideration by the board. Each member of a selection board must be serving in a grade higher than the grade of the officers under consideration by the board, except that no member of a board may be serving in a grade below major or lieutenant commander.

(2) A selection board shall include at least one officer from each competitive category of officers to be considered by the board.

(3) When reserve officers of an armed force are to be considered by a selection board, the membership of the board shall include at least one reserve officer of that armed force, except that in the case of a board which is considering officers in the grade of colonel or brigadier general or, in the case of officers of the Navy, captain or commodore admiral, no reserve officer need be included if there are no reserve officers of that armed force on active duty in the next higher grade.

(4) Except as provided in paragraph (3), if qualified officers on the active-duty list are not available in sufficient numbers to comprise a selection board, the Secretary of the military department concerned shall complete the membership of the board by appointing as members of the board retired officers of the same armed force who hold a retired grade higher than the grade of the officers under consideration by the board. A retired general or flag officer who is on active duty for the purpose of serving on a selection board shall not, while so serving, be counted against any limitation on the number of general and flag officers who may be on active duty.

(b) No officer may be a member of two successive selection boards for the consideration of officers of the same competitive category and grade.

§ 613. Oath of members of selection boards

Each member of a selection board shall swear that he will perform his duties as a member of the board without prejudice or partiality and having in view both the special fitness of officers and the efficiency of his armed force.

§ 614. Notice of convening of selection boards; communications with boards

(a) At least 30 days before a selection board is convened under section 611(a) of this title to recommend officers in a grade for promotion to the next higher grade, the Secretary concerned (1) shall notify in writing the officers eligible for consideration for promotion of the date on which the board is to convene and the name and date of rank of the junior officer, and of the senior officer, in the promotion zone as of the date of the notification, or (2) shall issue a general written notice to the armed force concerned regarding the convening of the board, the names of the officers eligible for consideration by the board as of the date of the notification, the convening date of the board, and the name and date of rank of the junior officer, and of the senior officer, in the promotion zone as of the date of the notification.

(b) An officer eligible for consideration by a selection board convened under section 611(a) of this title may send a written communication to the board, to arrive not later than the date the board convenes, calling attention to any matter concerning himself that the officer considers important to his case. The selection board shall give consideration to any timely communication under this subsection.

§ 615. Information furnished to selection boards

The Secretary of the military department concerned shall furnish each selection board convened under section 611(a) of this title with—

(1) the maximum number, as determined in accordance with section 622 of this title, of officers in each competitive category under consideration that the board may recommend for promotion to the next higher grade;

(2) the names of all officers in each competitive category to be considered by the board for promotion;

(3) the pertinent records (as determined by the Secretary) of each officer whose name is furnished to the board;

(4) information relating to the needs of the armed force concerned for officers having particular skills; and

(5) such other information and guidelines as may be necessary to enable the board to properly perform its functions.

§ 616. Recommendations for promotion by selection boards

(a) A selection board convened under section 611(a) of this title shall recommend for promotion to the next higher grade those officers considered by the board whom the board, giving due consideration to the needs of the armed force concerned for officers with particular skills, considers best qualified for promotion within each competitive category considered by the board.

(b) The Secretary of the military department concerned shall establish the number of officers such a selection board may recommend for promotion from among officers being considered from below the promotion zone in any competitive category. Such number may not exceed the number equal to 10 percent of the maximum number of officers that the board is authorized to recommend for promotion in such competitive category, except that the Secretary of Defense may authorize a greater number, not to exceed 15 percent of the total number of officers that the board is authorized to recommend for promotion, if the Secretary of Defense determines that the needs of the service so require. If the number determined under this subsection is less than one, the board may recommend one such officer. The number of officers recommended for promotion from below the promotion zone does not increase the maximum number of officers which the board is authorized under section 615 of this title to recommend for promotion.

(c) A selection board convened under section 611(a) of this title may not recommend an officer for promotion unless—

(1) the officer receives the recommendation of a majority of the members of the board; and

(2) a majority of the members of the board finds that the officer is fully qualified for promotion.

(d) Except as otherwise provided by law, an officer on the active-duty list may not be promoted to a higher grade under this chapter unless he is considered and recommended for promotion to that grade by a selection board convened under this chapter.

§ 617. Reports of selection boards

(a) Each selection board convened under section 611(a) of this title shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing a list of the names of the officers it recommends for promotion and certifying (1) that the board has carefully considered the record of each officer whose name was furnished to it under section 615 of this title, and (2) that, in the opinion of a majority of the members of the board, the officers recommended for promotion by the board are best qualified for promotion to meet the needs of the armed force concerned among those officers whose names were furnished to the selection board.

(b) A selection board convened under section 611(a) of this title shall include in its report to the Secretary concerned the name of any regular officer before it for consideration for promotion whose record, in the opinion of a majority of the members of the board,

indicates that the officer should be required under chapter 60 of this title to show cause for his retention on active duty.

§ 618. Action on reports of selection boards

(a) If, after reviewing the report of a selection board submitted to him under section 617(a) of this title, the Secretary of the military department concerned determines that the board has acted contrary to law or regulation, the Secretary shall return the report to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this subsection, the selection board (or a subsequent selection board convened under section 611(a) of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report and shall resubmit the report, as revised, to the Secretary in accordance with section 617 of this title.

(b)(1) After his final review of the report of a selection board, the Secretary concerned shall submit the report, with his recommendations thereon, to the Secretary of Defense for transmittal to the President for his approval, modification, or disapproval.

(2) The Secretary concerned may submit to a board of officers convened under section 1181 of this title the name of any officer who is named in the report of a selection board as having a record which indicates that the officer should be required to show cause for his retention on active duty.

(c) The name of an officer recommended for promotion by a selection board may be removed from the report of the selection board only by the President.

(d) Upon approval by the President of the report of a selection board, the names of the officers recommended for promotion by the selection board (other than any name removed by the President) may be disseminated to the armed force concerned. If such names have not been sooner disseminated, such names (other than the name of any officer whose promotion the Senate failed to confirm) shall be promptly disseminated to the armed force concerned upon confirmation by the Senate.

(e) Except as authorized or required by this section, proceedings of a selection board convened under section 611(a) of this title may not be disclosed to any person not a member of the board.

SUBCHAPTER II -PROMOTIONS

Sec.
619. Eligibility for consideration for promotion.
620. Active-duty lists.
621. Competitive categories for promotion.
622. Numbers to be recommended for promotion.
623. Establishment of promotion zones.
624. Promotions: how made.
625. Authority to vacate promotions to grades of brigadier general and commodore admiral.
626. Acceptance of promotions; oath of office.

§ 619. Eligibility for consideration for promotion

(a)(1) An officer who is on the active-duty list of the Army, Air Force, or Marine Corps and holds a permanent appointment in the grade of second lieutenant or first lieutenant or is on the active-duty list of the Navy and holds a permanent appointment in the grade of

ensign or lieutenant (junior grade) may not be promoted to the next higher permanent grade until he has completed the following period of service in the grade in which he holds a permanent appointment:

(A) Eighteen months, in the case of an officer holding a permanent appointment in the grade of second lieutenant or ensign.

(B) Two years, in the case of an officer holding a permanent appointment in the grade of first lieutenant or lieutenant (junior grade).

(2) Subject to paragraph (4), an officer who is on the active-duty list of the Army, Air Force, or Marine Corps and holds a permanent appointment in a grade above first lieutenant or is on the active-duty list of the Navy and holds a permanent appointment in a grade above lieutenant (junior grade) may not be considered for selection for promotion to the next higher permanent grade until he has completed the following period of service in the grade in which he holds a permanent appointment:

(A) Three years, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of captain, major, or lieutenant colonel or of an officer of the Navy holding a permanent appointment in the grade of lieutenant, lieutenant commander, or commander.

(B) One year, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of colonel or brigadier general or of an officer of the Navy holding a permanent appointment in the grade of captain or commodore admiral.

(3) When the needs of the service require, the Secretary of the military department concerned may prescribe a longer period of service in grade for eligibility for promotion, in the case of officers to whom paragraph (1) applies, or for eligibility for consideration for promotion, in the case of officers to whom paragraph (2) applies.

(4) The Secretary of the military department concerned may waive paragraph (2) to the extent necessary to assure that officers described in clause (A) of such paragraph have at least two opportunities for consideration for promotion to the next higher grade as officers below the promotion zone.

(5) In computing service in grade for purposes of this section, service in a grade held as a result of assignment to a position is counted as service in the grade in which the officer would have served except for such assignment or appointment.

(b) An officer who has failed of selection for promotion to the next higher grade remains eligible for consideration for promotion to that grade as long as he continues on active duty in other than a retired status and is not promoted.

(c)(1) Each time a selection board is convened under section 611(a) of this title for consideration of officers in a competitive category for promotion to the next higher grade, each officer in the promotion zone (except as provided under paragraph (2)), and each officer above the promotion zone, for the grade and competitive category under consideration shall be considered for promotion.

(2) The Secretary of the military department concerned—

(A) may, by regulation, prescribe procedures to limit the officers to be considered by a selection board—

(i) from below the promotion zone; or

(ii) in the case of a selection board to recommend officers for promotion to the grade of brigadier general or commodore admiral,

to those officers who are determined to be exceptionally well qualified for promotion; and

(B) may, by regulation, prescribe criteria for determining which officers below the promotion zone or in the grades of colonel and, in the case of officers of the Navy, captain are exceptionally well qualified for promotion.

(d) A selection board convened under section 611(a) of this title may not consider for promotion to the next higher grade—

(1) an officer whose name is on a promotion list for that grade as a result of his selection for promotion to that grade by an earlier selection board convened under that section; or

(2) an officer of the Navy or Marine Corps who is an officer designated for limited duty and who holds a grade above lieutenant commander or major.

§ 620. Active-duty lists

(a) The Secretary of the military department concerned shall maintain a single list of all officers (other than officers described in section 641 of this title) who are on active duty for each armed force under his jurisdiction (other than the Coast Guard when it is operating as a service in the Navy).

(b) Officers shall be carried on the active-duty list of the armed force of which they are members in the order of seniority of the grade in which they are serving on active duty. Officers serving in the same grade shall be carried in the order of their rank in that grade.

(c) An officer whose position on the active-duty list results from service under a temporary appointment or in a grade held by reason of assignment to a position has, when that appointment or assignment ends, the grade and position on the active-duty list that he would have held if he had not received that appointment or assignment

§ 621. Competitive categories for promotion

Under regulations prescribed by the Secretary of Defense, the Secretary of each military department shall establish competitive categories for promotion. Each officer whose name appears on an active-duty list shall be carried in a competitive category of officers. Officers in the same competitive category shall compete among themselves for promotion.

§ 622. Numbers to be recommended for promotion

Before convening a selection board under section 611(a) of this title for any grade and competitive category, the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, shall determine (1) the number of positions needed to accomplish mission objectives which require officers of such competitive category in the grade to which the board will recommend officers for promotion, (2) the estimated number of officers needed to fill vacancies in such positions during the period in which it is anticipated that officers selected for promotion will be promoted, and (3) the number of officers authorized by the Secretary *of the military department concerned to serve on active duty in the grade and competitive category under consideration. Based on such determinations, the Secretary of the military department concerned shall determine the maximum number of officers in such competitive category which the selection board may recommend for promotion.*

§ 623. Establishment of promotion zones

(a) Before convening a selection board under section 611(a) of this title to consider officers for promotion to any grade above first lieutenant or lieutenant (junior grade), the Secretary of the military department concerned shall establish a promotion zone for officers serving in each grade and competitive category to be considered by the board.

(b) The Secretary concerned shall determine the number of officers in the promotion zone for officers serving in any grade and competitive category from among officers who are eligible for promotion in that grade and competitive category. Such determination shall be made on the basis of an estimate of—

(1) the number of officers needed in that competitive category in the next higher grade in each of the next five years;

(2) the number of officers to be serving in that competitive category in the next higher grade in each of the next five years;

(3) in the case of a promotion zone for officers to be promoted to a grade to which section 523 of this title is applicable, the number of officers authorized for such grade under such section to be on active duty on the last day of each of the next five fiscal years; and

(4) the number of officers that should be placed in that promotion zone in each of the next five years to provide to officers in those years relatively similar opportunity for promotion.

§ 624. Promotions: how made

(a)(1) When the report of a selection board convened under section 611(a) of this title is approved by the President, or in the case of officers selected for promotion to the grade of first lieutenant or lieutenant (junior grade), when a list of officers selected for promotion is approved by the President, the Secretary of the military department concerned shall place the names of all officers approved for promotion within a competitive category on a single list for that competitive category, to be known as a promotion list, in the order of the seniority of such officers on the active-duty list.

(2) Except as provided in subsection (d), officers on a promotion list for a competitive category shall be promoted to the next higher grade when additional officers in that grade and competitive category are needed. Promotions shall be made in the order in which the names of officers appear on the promotion list and after officers previously selected for promotion in that competitive category have been promoted.

(b)(1) A regular officer who is promoted under this section is appointed in the regular grade to which promoted and a reserve officer who is promoted under this section is appointed in the reserve grade to which promoted.

(2) The date of rank of an officer appointed to a higher grade under this section is determined under section 741(d) of this title.

(c) Appointments under this section shall be made by the President, by and with the advice and consent of the Senate, except that appointments in the grade of first lieutenant or lieutenant (junior grade) under this section shall be made by the President alone.

(d)(1) The Secretary concerned may delay the appointment of an officer under this section if—

(A) sworn charges against the officer have been received by an officer exercising general court-martial jurisdiction over the officer and such charges have not been disposed of;

(B) an investigation is being conducted to determine whether disciplinary action of any kind should be brought against the officer;

(C) a board of officers has been convened under chapter 60 of this title to review the record of the officer; or

(D) a criminal proceeding in a Federal or State court is pending against the officer.

If no disciplinary action is taken against the officer, if the charges against the officer are withdrawn or dismissed, if the officer is not ordered removed from active duty by the Secretary concerned under chapter 60 of this title, or if the officer is acquitted of the charges brought against him, as the case may be, the officer shall be retained on the promotion list and shall, upon promotion to the next higher grade, have the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if no delay had intervened.

(2) The Secretary concerned may also delay the appointment of an officer to the next higher grade under this section in any case in which the Secretary finds that there is cause to believe that the officer is mentally, physically, morally, or professionally unqualified to perform the duties of the grade for which he was selected for promotion. If the Secretary concerned later determines that the officer is qualified for promotion to such grade, the officer shall, upon such promotion, have the same date of rank, the same effective date for pay and allowances in the higher grade to which appointed, and the same position on the active-duty list as he would have had if no delay had intervened.

(3) The appointment of an officer may not be delayed under this subsection unless the officer has been given written notice of the grounds for the delay. An officer whose promotion has been delayed under this subsection shall be afforded an opportunity to make a written statement to the Secretary concerned in response to the action taken by the Secretary. Any such statement shall be given careful consideration by the Secretary.

(4) An appointment of an officer may not be delayed under the subsection for more than six months after the date on which the officer would otherwise have been appointed unless the Secretary concerned specifies a further period of delay. An officer's appointment may not be delayed more than 90 days after final action has been taken in any criminal case against such officer in a Federal or State court, more than 90 days after final action has been taken in any court-martial case against such officer, or more than 18 months after the date on which such officer would otherwise have been appointed, whichever is later.

§ 625. Authority to vacate promotions to grades of brigadier general and commodore admiral

(a) The President may vacate the promotion to the grade of brigadier general or commodore admiral of an officer who has served less than 18 months in that grade after promotion to that grade under this chapter.

(b) An officer of the Army, Air Force, or Marine Corps whose promotion is vacated under this section holds the regular grade of colonel, if he is a regular officer, or the reserve grade of colonel, if he is a reserve officer. An officer of the Navy whose promotion is vacated under this section holds the regular grade of captain, if he is a regular officer, or the reserve grade of captain, if he is a reserve officer.

(c) The position on the active-duty list of an officer whose promotion is vacated under this section is the position he would have held had he not been promoted to the grade of brigadier general or commodore admiral.

§ 626. Acceptance of promotions; oath of office

(a) An officer who is appointed to a higher grade under section 624 of this title is considered to have accepted such appointment on the date on which the appointment is made unless he expressly declines the appointment.

(b) An officer who has served continuously since he subscribed to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under section 624 of this title.

SUBCHAPTER III—FAILURE OF SELECTION FOR PROMOTION AND RETIREMENT FOR YEARS OF SERVICE

Sec.
627. Failure of selection for promotion.
628. Special selection boards.
629. Removal from a list of officers recommended for promotion.
630. Discharge of regular commissioned officers with less than five years of active commissioned service or found not qualified for promotion to first lieutenant or lieutenant (junior grade).
631. Effect of failure of selection for promotion: regular first lieutenants and lieutenants (junior grade).
632. Effect of failure of selection for promotion: regular captains and majors of the Army, Air Force, and Marine Corps and regular lieutenants and lieutenant commanders of the Navy.
633. Retirement for years of service: regular lieutenant colonels and commanders.
634. Retirement for years of service: regular colonels and Navy captains.
635. Retirement for years of service: regular brigadier generals and commodore admirals.
636. Retirement for years of service: regular major generals and rear admirals.

§ 627. Failure of selection for promotion

An officer in a grade below the grade of colonel or, in the case of an officer of the Navy, captain who is in or above the promotion zone established for his grade and competitive category under section 623 of this title and is considered but not selected for promotion by a selection board convened under section 611(a) of this title shall be considered to have failed of selection for promotion.

§ 628. *Special selection boards*

(a)(1) In the case of an officer who is eligible for promotion who the Secretary of the military department concerned determines was not considered for selection for promotion by a selection board because of administrative error, the Secretary concerned, under regulations prescribed by the Secretary of Defense, shall convene a special selection board under this subsection (composed in accordance with section 612 of this title) to determine whether such officer should be recommended for promotion.

(2) A special selection board convened under paragraph (1) shall consider the record of the officer as his record would have appeared to the board that should have considered him. That record shall be compared with a sampling of the records of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that should have considered him.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion an officer in a grade below the grade of colonel or, in the case of an officer of the Navy, captain whose name was referred to it for consideration, the officer shall be considered to have failed of selection for promotion.

(b)(1) In the case of an officer who is eligible for promotion who was considered for selection for promotion by a selection board but was not selected, the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, may convene a special selection board under this subsection (composed in accordance with section 612 of this title) to determine whether such officer should be recommended for promotion if the Secretary concerned determines that—

(A) the action of the board which considered the officer was contrary to law or involved material error of fact or material administrative error; or

(B) the board did not have before it for its consideration material information.

(2) A special selection board convened under paragraph (1) shall consider the record of the officer as his record, if corrected, would have appeared to the board that considered him. That record shall be compared with the records of a sampling of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that considered him.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion an officer whose name was referred to it for consideration, the officer incurs no additional failure of selection for promotion.

(c)(1) Each special selection board convened under this section shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing the name of each officer it recommends for promotion and certifying that the board has carefully considered the record of each officer whose name was referred to it.

(2) The provisions of sections 617(b) and 618 of this title apply to the report and proceedings of a special selection board convened under this section in the same manner as they apply to the report

and proceedings of a selection board convened under section 611(a) of this title.

(d)(1) If the report of a special selection board convened under this section, as approved by the President, recommends for promotion to the next higher grade an officer whose name was referred to it for consideration, such officer shall, as soon as practicable, be appointed to the next higher grade in accordance with subsections (b), (c), and (d) of section 624 of this title.

(2) An officer who is promoted to the next higher grade as the result of the recommendation of a special selection board convened under this section shall, upon such promotion, have the same date of rank, the same effective date for the pay and allowances of that grade, and the same position on the active-duty list as he would have had if he had been recommended for promotion to that grade by the board which should have considered, or which did consider, him.

(e) The provisions of section 613 of this title apply to members of special selection boards convened under this section.

§ 629. Removal from a list of officers recommended for promotion

(a) The President may remove the name of any officer from a list of officers recommended for promotion by a selection board convened under this chapter.

(b) If, after consideration of a list of officers approved for promotion by the President, the Senate does not give its advice and consent to the appointment of an officer whose name is on the list, that officer's name shall be removed from the list.

(c)(1) An officer whose name is removed from a list under subsection (a) or (b) continues to be eligible for consideration for promotion. If he is recommended for promotion by the next selection board convened for his grade and competitive category and he is promoted, the Secretary of the military department concerned may, upon such promotion, grant him the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if his name had not been so removed.

(2) If such an officer who is in a grade below the grade of colonel or, in the case of the Navy, captain is not recommended for promotion by the next selection board convened for his grade and competitive category, or if his name is again removed from the list of officers recommended for promotion, or if the Senate again does not give its advice and consent to his promotion, he shall be considered for all purposes to have twice failed of selection for promotion.

§ 630. Discharge of regular commissioned officers with less than five years of active commissioned service or found not qualified for promotion for first lieutenant or lieutenant (junior grade)

The Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense—

(1) may discharge any regular officer on the active-duty list who—

(A) has less than five years of active commissioned service; or

(B) is serving in the grade of second lieutenant or ensign and has been found not qualified for promotion to the regular grade of first lieutenant or lieutenant (junior grade); and

(2) shall, unless the officer has been promoted, discharge any officer described in clause (1)(B) at the end of the eighteen-month period begining on the date on which the officer is first found not qualified for promotion.

§ 631. Effect of failure of selection for promotion: regular first lieutenants and lieutenants (junior grade)

(a) Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies), each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of first lieutenant and has failed of selection for promotion to the regular grade of captain for the second time, and each officer of the Regular Navy who holds the regular grade of lieutenant (junior grade) and has failed of selection for promotion to the regular grade of lieutenant for the second time, whose name is not on a list of officers recommended for promotion to the next higher regular grade shall—

(1) be discharged on the date requested by him and approved by the Secretary of the military department concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time;

(2) if he is eligible for retirement under any provision of law, be retired under that law on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time; or

(3) if on the date on which he is to be discharged under clause (1) he is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, be retained on active duty until he is qualified for retirement and then be retired under that section, unless he is sooner retired or discharged under another provision of law.

(b) The retirement or discharge of an officer pursuant to this section shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

§ 632. Effect of failure of selection for promotion: regular captains and majors of the Army, Air Force, and Marine Corps and regular lieutenants and lieutenant commanders of the Navy

(a) Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies) and except as provided under section 637(a) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of captain or major, and each officer of the Regular Navy who holds the regular grade of lieutenant or lieutenant commander, who has failed of selection for promotion to the next higher regular grade for the second time

and whose name is not on a list of officers recommended for promotion to the next higher regular grade shall—

(1) be discharged on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time;

(2) if he is eligible for retirement under any provision of law, be retired under that law on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time; or

(3) if on the date on which he is to be discharged under clause (1) he is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, be retained on active duty until he is qualified for retirement and then retired under that section, unless he is sooner retired or discharged under another provision of law.

(b) The retirement or discharge of an officer pursuant to this section shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

*§633. **Retirement for years of service: regular lieutenant colonels and commanders***

Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies) and except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of lieutenant colonel, and each officer of the Regular Navy who holds the regular grade of commander, who is not on a list of officers recommended for promotion to the regular grade of colonel or captain, respectively, shall, if not earlier retired, be retired on the first day of the month after the month in which he completes twenty-eight years of active commissioned service.

*§634. **Retirement for years of service: regular colonels and Navy captains***

Except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of colonel, and each officer of the Regular Navy who holds the regular grade of captain, who is not on a list of officers recommended for promotion to the regular grade of brigadier general or commodore admiral, respectively, shall, if not earlier retired, be retired on the first day of the month after the month in which he completes thirty years of active commissioned service.

*§635. **Retirement for years of service: regular brigadier generals and commodore admirals***

Except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of brigadier general, and each officer of the Regular Navy who holds the regular grade of commodore ad-

miral, who is not on a list of officers recommended for promotion to the regular grade of major general or rear admiral, respectively, shall, if not earlier retired, be retired on the first day of the first month beginning after the date of the fifth anniversary of his appointment to that grade or on the first day of the month after the month in which he completes thirty years of active commissioned service, whichever is later.

§ 636. Retirement for years of service: regular major generals and rear admirals

Except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of major general, and each officer of the Regular Navy who holds the regular grade of rear admiral, shall, if not earlier retired, be retired on the first day of the first month beginning after the date of the fifth anniversary of his appointment to that grade or on the first day of the month after the month in which he completes thirty-five years of active commissioned service, whichever is later.

SUBCHAPTER IV—CONTINUATION ON ACTIVE DUTY AND SELECTIVE EARLY RETIREMENT

Sec.
637. Selection of regular officers for continuation on active duty.
638. Selective early retirement.
639. Continuation on active duty to complete disciplinary action.
640. Deferment of retirement or separation for medical reasons.

§ 637. Selection of regular officers for continuation on active duty

(a)(1) An officer subject to discharge or retirement in accordance with section 632 of this title may, subject to the needs of the service, be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 611(b) of this title.

(2) An officer who holds the regular grade of captain in the Army, Air Force, or Marine Corps, or the regular grade of lieutenant in the Navy, and who is subject to discharge or retirement in accordance with section 632 of this title may not be continued on active duty under this subsection for a period which extends beyond the last day of the month in which he completes twenty years of active commissioned service unless he is promoted to the regular grade of major or lieutenant commander, respectively.

(3) An officer who holds the regular grade of major or lieutenant commander who is subject to discharge or retirement in accordance with section 632 of this title may not be continued on active duty under this subsection for a period which extends beyond the last day of the month in which he completes twenty-four years of active commissioned service unless he is promoted to the regular grade of lieutenant colonel or commander, respectively.

(4) An officer who is selected for continuation on active duty under this subsection but declines to continue on active duty shall be discharged, retired, or retained on active duty, as appropriate, in accordance with section 632 of this title.

(5) Each officer who is continued on active duty under this subsection, is not subsequently promoted or continued on active duty, and

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96–1462

DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

NOVEMBER 13, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NICHOLS, from the Committee on Armed Services, submitted the following

REPORT

[To accompany S. 1918]

[Including cost estimate of the Congressional Budget Office]

The Committee on Armed Services to whom was referred the bill (S. 1918) to amend title 10, United States Code, to revise and make uniform the provisions of law relating to appointment, promotion, separation, and retirement of regular commissioned officers of the Army, Navy, Air Force, and Marine Corps, to establish the grade of commodore admiral in the Navy, to equalize the treatment of male and female commissioned officers, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill is a complete substitute therefor and appears in italic type in the reported bill.

The amendment to the title of the bill makes minor technical wording changes.

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is not on a list of officers recommended for continuation or for promotion to the next higher regular grade shall, unless sooner retired or discharged under another provision of law—

(A) be discharged upon the expiration of his period of continued service; or

(B) if he is eligible for retirement under any provision of law, be retired under that law on the first day of the first month following the month in which he completes his period of continued service.

Notwithstanding the provisions of clause (A), any officer who would otherwise be discharged under such clause and is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, shall, unless he is sooner retired or discharged under some other provision of law, be retained on active duty until he is qualified for retirement under that section and then be retired.

(6) The retirement or discharge of an officer pursuant to this subsection shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(b)(1) An officer subject to retirement under section 633, 634, 635, or 636 of this title may, subject to the needs of the service, have his retirement deferred and be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 611(b) of this title.

(2) An officer subject to retirement under section 635 or 636 of this title who is serving in a grade above major general or rear admiral may, subject to the needs of the service, have his retirement deferred and be continued on active duty by the President.

(3) Any deferral of retirement and continuation on active duty under this subsection shall be for a period not to exceed five years, but such period may not (except as provided under section 1251(b) of this title) extend beyond the date of the officer's sixty-second birthday.

(c) Continuation of an officer on active duty under this section pursuant to the action of a selection board convened under section 611(b) of this title is subject to the approval of the Secretary of the military department concerned.

(d) The Secretary of Defense shall prescribe regulations for the administration of this section.

§ 638. Selective early retirement

(a) A regular officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps—

(1) who holds the regular grade of lieutenant colonel or commander and has failed of selection for promotion to the grade of colonel or, in the case of an officer of the Navy, captain two or more times and whose name is not on a list of officers recommended for promotion;

(2) who holds the regular grade of colonel or, in the case of an officer of the Navy, captain and has served at least four years of active duty in that grade and whose name is not on a list of officers recommended for promotion;

(3) who holds the regular grade of brigadier general or commodore admiral and has served at least four years of active duty in that grade and whose name is not on a list of officers recommended for promotion; or

(4) who holds the regular grade of major general or rear admiral and has served at least four years of active duty in that grade,

may be considered for early retirement by a selection board convened under section 611(b) of this title. The Secretary of the military department concerned shall specify the number of officers described in clauses (1) and (2) which such a board may recommend for early retirement, but such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.

(b)(1) An officer in a grade below brigadier general or commodore admiral who is recommended for early retirement under this section and whose early retirement is approved by the Secretary concerned shall—

(A) be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement; or

(B) if the officer is not eligible for retirement under any provision of law, be retained on active duty until he is qualified for retirement under section 3911, 6323, or 8911 of this title, and then be retired under that section, unless he is sooner retired or discharged under some other provision of law.

(2) An officer who holds the regular grade of brigadier general, major general, commodore admiral, or rear admiral who is recommended for early retirement under this section and whose early retirement is approved by the Secretary concerned shall be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the tenth calendar month beginning after the month in which the Secretary concerned approved the report of the board which recommended the officer for early retirement.

(c) So long as an officer in a grade below brigadier general or commodore admiral holds the same grade, he may not be considered for early retirement under this section more than once in any five-year period.

(d) The retirement of an officer pursuant to this section shall be considered to be an involuntary retirement for purposes of any other provision of law.

(e) The Secretary of Defense shall prescribe regulations for the administration of this section. Such regulations shall require that when the Secretary of the military department concerned submits a list of officers to a selection board convened under section 611(b) of this title to consider officers for selection for early retirement under this section, such list shall include each officer on the active-duty list in the same grade and competitive category whose position on the active-duty list is between that of the most junior officer in that grade and competitive category whose name is submitted to the board and that of the most senior officer in that grade and competitive category whose name is submitted to the board.

§ 639. Continuation on active duty to complete disciplinary action

When any action has been commenced against an officer with a view to trying such officer by court-martial and such officer is to be separated or retired in accordance with this chapter, the Secretary of the military department concerned may delay the separation or retirement of the officer, without prejudice to such action, until the completion of the action.

§ 640. Deferment of retirement or separation for medical reasons

The Secretary of the military department concerned may defer the retirement or separation under this title of any officer if the evaluation of the physical condition of the officer and determination of the officer's entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date on which the officer would otherwise be required to retire or be separated under this title.

SUBCHAPTER V—ADDITIONAL PROVISIONS RELATING TO PROMOTION, SEPARATION, AND RETIREMENT

Sec.
641. Applicability of chapter.
642. Entitlement of officers discharged or retired under this chapter to separation pay or retired pay.
643. Chaplains: discharge or retirement upon loss of professional qualifications.
644. Authority to suspend officer personnel laws.
645. Definitions.

§ 641. Applicability of chapter

Officers in the following categories are not subject to this chapter (other than section 640):

(1) Reserve officers—

(A) on active duty for training;

(B) on active duty under section 175, 265, 3015, 3019, 3033, 3496, 5251, 5252, 8019, 8033, or 8496 of this title or section 708 of title 32;

(C) on active duty under section 672(d) of this title or under section 502 or 503 of title 32 in connection with organizing, administering, recruiting, instructing, or training the reserve components;

(D) on active duty to pursue special work;

(E) ordered to active duty under section 673b of this title; or

(F) on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System.

(2) The director of admissions, dean, and permanent professors at the United States Military Academy and the registrar, dean, and permanent professors at the United States Air Force Academy.

(3) Warrant officers.

(4) Retired officers on active duty.

(5) Students at the Uniformed Services University of the Health Sciences.

§ 642. Entitlement of officers discharged or retired under this chapter to separation pay or retired pay

(a) An officer who is discharged under this chapter is entitled, if eligible therefor, to separation pay under section 1174 of this title.

(b) An officer who is retired under this chapter is entitled to retired pay computed under chapter 71 of this title.

§ 643. Chaplains: discharge or retirement upon loss of professional qualifications

Under regulations prescribed by the Secretary of Defense, a commissioned officer on the active-duty list of the Army, Navy, or Air Force who is appointed or designated as a chaplain may, if he fails to maintain the qualifications needed to perform his professional function, be discharged or, if eligible for retirement, may be retired.

§ 644. Authority to suspend officer personnel laws

In time of war, or of national emergency declared by Congress or the President after November 30, 1980, the President may suspend the operation of any provision of this chapter or of any other law relating to the promotion, involuntary retirement, or separation of commissioned officers of the Army, Navy, Air Force, or Marine Corps. So long as such war or national emergency continues, any such suspension may be extended by the President. Any such suspension shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on the date of the termination of the war or national emergency, whichever occurs first. With respect to the end of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621-1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of the termination of the emergency.

§ 645. Definitions

In this chapter:

(1) "Promotion zone" means a promotion eligibility category consisting of the officers on an active-duty list in the same grade and competitive category—

(A) who—

(i) in the case of officers in grades below colonel, for officers of the Army, Air Force, and Marine Corps, or captain, for officers of the Navy, have neither (I) failed of selection for promotion to the next higher grade, nor (II) been removed from a list of officers recommended for promotion to that grade; or

(ii) in the case of officers in the grade of colonel or brigadier general, for officers of the Army, Air Force, and Marine Corps, or captain or commodore admiral, for officers of the Navy, have neither (I) not been recommended for promotion to the next higher grade when considered in the promotion zone, nor (II) been removed from a list of officers recommended for promotion to that grade; and

(B) are senior to the officer designated by the Secretary of the military department concerned to be the junior officer eligible for consideration for promotion to the next higher grade in the promotion zone.

(2) "Officers above the promotion zone" means a group of officers on an active-duty list in the same grade and competitive category who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as those officers in the promotion zone for that competitive category; and

(C) are senior to the senior officer in the promotion zone for that competitive category.

(3) "Officers below the promotion zone" means a group of officers on the active-duty list in the same grade and competitive category who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as the officers in the promotion zone for that competitive category; and

(C) are junior to the junior officer in the promotion zone for that competitive category.

CHAPTER 37—GENERAL SERVICE REQUIREMENTS

Sec.
651. Members: required service.
652. Ready Reserves: requirement of notification of change of status.

§ 651. Members: required service

(a) Each person who becomes a member of an armed force, other than a person deferred under the next to the last sentence of [section 456(d)(1) of title 50, appendix] *section 6(d)(1) of the Military Selective Service Act (50 U.S.C. App. 456(d)(1))*, shall serve in the armed forces for a total of six years, unless he is sooner discharged because of personal hardship under regulations prescribed by the Secretary of Defense or, if he is a member of the Coast Guard while it is not operating as a service in the Navy, by the Secretary of [the Treasury] *Transportation*. Any part of such service that is not active duty or is active duty for training shall be performed in a reserve component.

(b) Each person covered by subsection (a) who is not a Reserve, and who is qualified, shall, upon his release from active duty, be transferred to a reserve component of his armed force to complete the service required by subsection (a).

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CHAPTER 39—ACTIVE DUTY

Sec.
671. Members not to be assigned outside United States before completing training.
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688. Regular components: retired members.
689. Reserve officers: grade in which ordered to active duty.

* * * * * * *

§ 679. Active duty agreements

(a) * * *

* * * * * * *

(c) Agreements made under subsection (a) shall be uniform so far as practicable, and are subject to such standards and policies as may be prescribed by the Secretary of Defense for the armed forces under his jurisdiction or by the Secretary of [the Treasury] *Transportation* for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

* * * * * * *

[§ 687. Non-Regulars: readjustment payment upon involuntary release from active duty

[(a) Except for members covered by subsection (b), a member of a reserve component or a member of the Army or the Air Force without component who is released from active duty involuntarily, or because he was not accepted for an additional tour of active duty for which he volunteered after he had completed a tour of active duty, and who has completed, immediately before his release, at least five years of continuous active duty, is entitled to a readjustment payment computed by multiplying his years of active service (other than in time of war or of national emergency declared by Congress after June 28, 1962), but not more than eighteen, by two months' basic pay of the grade in which he is serving at the time of his release. However, a member who is released from active duty because his performance of duty has fallen below standards prescribed by the Secretary concerned, or because his retention on active duty is not clearly consistent with the interests of national security, is entitled to a readjustment payment computed on the basis of one-half of one month's basic pay of the grade in which the member is serving at the time of his release from active duty. A person covered by this subsection may not be paid more than two years' basic pay of the grade in which he is serving at the time of his release or $15,000, whichever amount is the lesser. For the purposes of this subsection—

[(1) a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days;

[(2) a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded; and

[(3) a period for which the member concerned has received readjustment pay under another provision of law may not be included.

[(b) Subsection (a) does not apply to a member who—

[(1) is released from active duty at his request;

[(2) is released from active duty for training;

[(3) under regulations to be prescribed by the Secretary of Defense, or by the Secretary of the Treasury with respect to the Coast Guard when it is not operating as a service in the Navy, is released from active duty because of moral or professional dereliction;

[(4) upon release from active duty, is immediately eligible for retired pay or retainer pay based entirely on his military service;

[(5) upon release from active duty, is immediately eligible for severance pay (other than under section 680 of this title) based on his military service and who elects to receive that severance pay; or

[(6) upon release from active duty, is immediately eligible for disability compensation under a law administered by the Veterans' Administration and who elects to receive that compensation.

However, a member covered by clause (6) may receive a readjustment payment under this section and disability compensation if an amount equal to 75 percent of the readjustment payment is deducted from the disability compensation. This subsection does not prevent a member who elects to receive a readjustment payment under this section from becoming entitled to disability compensation based on his service performed after he makes that election.

[(c) A member to whom a readjustment payment is made under this section is not entitled to mustering-out pay under the Mustering-Out Payment Act of 1944 (58 Stat. 8), the Veterans' Readjustment Assistance Act of 1952 (66 Stat. 663), or chapter 43 of title 38. If he was paid mustering-out pay under one of those provisions before he became entitled to a readjustment payment under this section, the amount of that mustering-out pay shall be deducted from the amount to which he is entitled under this section.

[(d) Any readjustment payment to which a member becomes entitled under this section shall be reduced by the amount of any previous payment made to him under this section that he has not repaid to the United States. If he has repaid that amount to the United States, the period covered by it shall be treated as a period for which a payment has not been made under this section.

[(f) If a member who received a readjustment payment under this section after June 28, 1962, qualifies for retired pay under any provision of this title or title 14 that authorizes his retirement upon completion of twenty years of active service, an amount equal to 75 percent of that payment, without interest, shall be deducted immediately from his retired pay.]

§ 688. Regular components: retired members

(a) Under regulations prescribed by the Secretary of Defense, a retired member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps may be ordered to active duty by the Secretary of the military department concerned at any time. The Secretary concerned may, to the extent consistent with other provisions of law, assign a member ordered to active duty under this section to such duties as the Secretary considers necessary in the interests of national defense.

(b) A retired member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps who, while on active duty, is promoted to a grade that is higher than his retired grade is entitled, upon his release from that tour of active duty, to placement on the retired list in the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(c) Except in time of war, or of national emergency declared by the Congress or the President after November 30, 1980, not more than 15 retired general officers of the Army, Air Force, or Marine Corps, and not more than 15 retired flag officers of the Navy, may be on active duty at any one time. For the purposes of this subsection a retired officer ordered to active duty for a period of 60 days or less is not counted.

§ 689. Reserve officers: grade in which ordered to active duty

A reserve officer who is ordered to active duty shall be ordered to active duty in his reserve grade.

CHAPTER 40—LEAVE

* * * * * * *

§ 702. Cadets and midshipmen

(a) * * *

(b) Sections 701, [702(a),] 703, and 704 of this [chapter] *title and subsection (a)* do not apply to cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, midshipmen at the United States Naval Academy, or cadets or midshipmen serving elsewhere in the armed forces. The Secretary concerned, or his designated representative, may prescribe regulations relating to leave for cadets and midshipmen.

* * * * * * *

CHAPTER 41—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.

711. Senior members of Military Staff Committee of United Nations: appointment.
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712. Foreign governments: detail to assist.
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719. Department of Commerce: assignment or detail [to Environmental Science Services Administration] *of members of the armed forces to National Oceanic and Atmospheric Administration.*

720. Chief of Staff to President: appointment.

* * * * * * *

§711a. American National Red Cross: detail of commissioned officers

[(a)] Commissioned officers of the Army, Navy, and Air Force may be detailed for duty with the American National Red Cross, by the Secretary of the military department concerned, as follows:

(1) for duty with Service to the Armed Forces Division—

(A) one or more officers of the Army Medical Department;

(B) one or more officers of the Medical Department of the Navy; and

(C) one or more officers selected from among medical officers, dental officers, veterinary officers, medical service officers, nurses, and medical specialists of the Air Force; and

(2) to be in charge of the first aid department—

(A) an officer of the Medical Corps of the Army;

(B) an officer of the Medical Corps of the Navy; or

(C) a medical officer of the Air Force.

* * * * * * *

§717. Members of the armed forces: participation in international sports

(a) The Secretary of Defense, or the Secretary of [the Treasury] *Transportation* with respect to the Coast Guard when it is not operating as a service in the Navy, may permit members of the armed forces under his jurisdiction to train for, attend, and participate in—

(1) Pan-American Games and Olympic Games; and

(2) any other international competition in amateur sports, if the Secretary of State determines that the interests of the United States will be served by participation in that competition.

[(c)] *(b)* Subject to [subsections (d), (e), and (f)] *subsections (c), (d), and (e)*, the Secretary of Defense or the Secretary of [the Treasury] *Transportation*, as the case may be, may spend such funds, and acquire and use such supplies, as he determines to be necessary to provide for—

(1) the training of members of the armed forces for the competitions covered by subsection (a);

(2) their attendance at and participation in those competitions; and

(3) the training of animals of the armed forces for, and their attendance at and participation in, those competitions.

[(d)] *(c)* Not more than $800,000, to be apportioned among the military departments as the Secretary of Defense prescribes, may be spent during each successive four-year period beginning on March 14, 1955, for the participation of members of the Army, Navy, Air Force, and Marine Corps in the competitions covered by subsection (a).

[(e)**]** *(d)* Not more than $100,000 may be spent during each successive four-year period beginning on March 14, 1955, for the participation of members of the Coast Guard in the competitions covered by subsection (a).

[(f)**]** *(e)* Appropriations available to the Department of Defense or to the Department of **[**the Treasury**]** *Transportation*, as the case may be, may be used to carry out this section.

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§719. Department of Commerce: assignment or detail [to Environmental Science Services Administration] *of members of the armed forces to National Oceanic and Atmospheric Administration*

Upon the request of the Secretary of Commerce, the Secretary of a military department may assign or detail members of the armed forces under his jurisdiction for duty in the **[**Environmental Science Services**]** *National Oceanic and Atmospheric* Administration, Department of Commerce, with reimbursement from the Department of Commerce. Notwithstanding any other provision of law, a member so assigned or detailed may exercise the functions, and assume the title, of any position in that Administration without affecting his status as a member of an armed force, but he is not entitled to the compensation fixed for that position.

§720. Chief of Staff to President: appointment

The President, by and with the advice and consent of the Senate, mey appoint a general officer of the Army, Air Force, or Marine Corps or a flag officer of the Navy as the Chief of Staff to the President and may deignate such position as a position of importance and responsibility under section 601 of this title.

CHAPTER 43—RANK AND COMMAND

Sec.
741. Rank: commissioned officers of *the* Army, Navy, Air Force, and Marine Corps.
743. Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force.
744. Physician to White House: assignment; grade.
745. Warrant officers: rank.
747. Command: when different commands of Army, Navy, Air Force, Marine Corps, and Coast Guard join.
749. Command: commissioned officers in same grade or corresponding grades on duty at same place.
750. Command: retired officers.

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§741. Rank: commissioned officers of *the* Army, Navy, Air Force, and Marine Corps

[(a) The commissioned officers listed below rank among themselves as follows:

Army, Air Force, and Marine Corps	*Navy and Coast Guard*
Lieutenant general	Vice admiral.
Major general	Rear admiral entitled to pay of upper half.
Brigadier general	Rear admiral entitled to pay of lower half.
Colonel	Captain.
Lieutenant colonel	Commander.

Army, Air Force, and Marine Corps	*Navy and Coast Guard*
Major	Lieutenant commander.
Captain	Lieutenant.
First lieutenant	Lieutenant (junior grade).
Second lieutenant	Ensign.

[(b) The rank, within each grade, among major generals of the Army, rear admirals entitled to the pay of the upper half of that grade in the Navy, major generals of the Air Force, and major generals of the Marine Corps, and among brigadier generals of the Army, rear admirals entitled to the pay of the lower half of that grade in the Navy, brigadier generals of the Air Force, and brigadier generals of the Marine Corps, is determined by their dates of rank.

[(c) A commissioned officer of the Army or the Air Force who is senior in rank to a commissioned officer of the Regular Army or the Regular Air Force, as the case may be, is senior to a commissioned officer of the Navy or Marine Corps who is junior to that officer.]

(a) Among the grades listed below, the grades of general and admiral are equivalent and are senior to other grades and the grades of second lieutenant and ensign are equivalent and are junior to other grades. Intermediate grades rank in the order listed as follows:

Army, Air Force, and Marine Corps:	*Navy*
General	*Admiral.*
Lieutenant general	*Vice admiral.*
Major general	*Rear admiral.*
Brigadier general	*Commodore admiral.*
Colonel	*Captain.*
Lieutenant colonel	*Commander.*
Major	*Lieutenant commander.*
Captain	*Lieutenant.*
First lieutenant	*Lieutenant (junior grade).*
Second lieutenant	*Ensign.*

(b) Rank among officers of the same grade or of equivalent grades is determined by comparing dates of rank. An officer whose date of rank is earlier than the date of rank of another officer of the same or equivalent grade is senior to that officer.

(c) Rank among officers of the same grade or of equivalent grades who have the same date of rank is determined by regulations prescribed by the Secretary of Defense which shall apply uniformly among the the Army, Navy, Air Force, and Marine Corps.

(d)(1) The date of rank of an officer who holds a grade as the result of an original appointment shall be determined by the Secretary of the military department concerned at the time of such appointment. If such an officer was credited at the time of such appointment with prior commissioned service or constructive service credit for advanced education or training or special experience, the date of rank of such officer shall be determined so as to reflect such prior commissioned service or constructive service. Determinations by the Secretary concerned under this paragraph shall be made

under regulations prescribed by the Secretary of Defense which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps.

(2) Except as otherwise provided by law, the date of rank of an officer who holds a grade as the result of a promotion is the date of his appointment to that grade.

(3) Under regulations prescribed by the Secretary of Defense, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, the date of rank of a reserve commissioned officer (other than a warrant officer) who is to be placed on the active-duty list and who has not been on continuous active duty since his original appointment as a reserve commissioned officer in a grade above warrant officer (W-4) may, effective on the date on which he is placed on the active-duty list, be changed by the Secretary concerned to a later date to reflect such officer's qualifications and experience.

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§743. Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force

The Chief of Staff of the Army, the Chief of Naval Operations, and the Chief of Staff of the Air Force rank among themselves according to dates of appointment to those offices, and rank above all other officers on the active-*duty* list of the Army, Navy, Air Force, and Marine Corps, except the Chairman of the Joint Chiefs of Staff.

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§750. Command: retired officers

A retired officer has no right to command except when on active duty.

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CHAPTER 47—UNIFORM CODE OF MILITARY JUSTICE

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SUBCHAPTER I—GENERAL PROVISIONS

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§802. Art. 2. Persons subject to this chapter

The following persons are subject to this chapter:

(1) * * *

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(8) Members of the [Environmental Science Services] *National Oceanic and Atmospheric* Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

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SUBCHAPTER IX—REVIEW OF COURTS-MARTIAL

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§ 865. Art. 65. Disposition of records after review by the convening authority

(a) * * *

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(c) All other special and summary court-martial records shall be reviewed by a judge advocate of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or Department of [the Treasury] *Transportation*, and shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

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SUBCHAPTER X—PUNITIVE ARTICLES

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§ 888. Art. 88. Contempt toward officials

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of [the Treasury] *Transportation*, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.

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CHAPTER 48—MILITARY CORRECTIONAL FACILITIES

Sec.
951. Establishment; organization; administration.
952. Parole.
953. Remission or suspension of sentence; restoration to duty; reenlistment.
954. Voluntary extension; probation.
955. Prisoners transferred to or from foreign countries.

§ 951. Establishment; organization; administration

(a) * * *

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(d) There may be made or repaired at each military correctional facility such supplies for the armed forces or other agencies of the United States as can properly and economically be made or repaired [as] *at* such facilities.

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§ 955. Prisoners transferred to or from foreign countries

(a) When a treaty is in effect between the United States and a foreign country providing for the transfer of convicted offenders, the Secretary concerned may, with the concurrence of the Attorney General, transfer to [said] *such* foreign country any offender against chapter 47 of this title. [Said] *Such* transfer shall be effected subject to the terms of [said] *such* treaty and chapter 306 of title 18[, United States Code].

CHAPTER 49—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
971. Service credit: officers may not count enlisted service performed while serving as cadet or midshipman.
972. Enlisted members: required to make up time lost.
973. Duties: [Regular officers] *officers on active duty*: performance of civil functions restricted.
974. Civilian employment: enlisted members.
975. Prohibition on the sale of certain defense articles from the stocks of the Department of Defense.
976. Membership in military unions, organizing of military unions, and recognition of military unions prohibited.
977. Denial of certain benefits to persons who fail to complete at least two years of an original enlistment.

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§ 973. Duties: [regular officers] *officers on active duty*; performance of civil functions restricted

(a) No officer [on the active list of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard] *of an armed force on active duty* may accept employment if that employment requires him to be separated from his organization, branch, or unit, or interferes with the performance of his military duties.

(b) Except as otherwise provided by law, no [officer on the active list of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard] *regular officer of an armed force on active duty* may hold a civil office by election or appointment, whether under the United States, a Territory or possession, or a State. The acceptance of such a civil office or the exercise of its functions by such an officer terminates his military appointment.

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CHAPTER 51—RESERVE COMPONENTS: STANDARDS AND PROCEDURES FOR RETENTION AND PROMOTION

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§ 1006. Commissioned officers: retention of after completing 18 or more, but less than 20, years of service

(a) * * *

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(e) A reserve commissioned officer on active duty (other than for training) who, on the date on which he would otherwise be removed from an active status under section 3846, 3848, 3851, 3852, 6389, 6397, 6403, 6410, 8846, 8848, 8851, or 8852 of this title or section 740 of title 14, and who is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, may, in the discretion of the Secretary concerned, be retained on active duty for a period of not more than two years, if at the end of that period he will be qualified for retirement under one of those sections and will not, before the end of that period, reach the age at which transfer from an active status or discharge is required by this title or title 14. An officer who is retained on active duty under this section may not be removed from an active status while he is on that duty. For officers covered by section 3846, 3848, 3851, or 3852 of this title, the ages at which transfer from an active status or discharge is required are those set forth in section 3843, 3844, or 3845 of this title, or section 21(e) of [the Act enacting this section] *Public Law 85-861*, as the case may be.

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CHAPTER 53—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.

1031. Administration of oath.
1033. Compensation: Reserve on active duty accepting from any person.
1034. Communicating with a member of Congress.
1035. Deposits of savings.
1036. Escorts for dependents of members: transportations and travel allowances.
1037. Counsel before foreign judicial tribunals and administrative agencies; court costs and bail.
1038. Service credit: certain service in Women's Army Auxiliary Corps.
1039. Crediting of minority service.
1040. Transportation of dependent patients.
[1040.] *1041.* Replacement of certificate of discharge.

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§1037. Counsel before foreign judicial tribunals and administrative agencies; court costs and bail

(a) * * *

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(c) Appropriations available to the military department concerned or the Department of [the Treasury] *Transportation*, as the case may be, for the pay of persons under its jurisdiction may be used to carry out this section.

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§1040. Transportation of dependent patients

(a) * * *

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(d) Transportation and travel expenses authorized by this section shall be furnished in accordance with joint regulations to be prescribed by the Secretary of [the Treasury] *Transportation*, the Secretary of Defense, the Secretary of Commerce, and the Secretary of Health[, Education, and Welfare] *and Human Services*, which shall require the use of transportation facilities of the United States insofar as practicable.

[§1040.] §*1041.* Replacement of certificate of discharge

If satisfactory proof is presented that a person who was discharged honorably or under honorable conditions has lost his certificate of discharge from an armed force or that it was destroyed without his procurement or connivance, the Secretary concerned may give that person, or his surviving spouse, a certificate of that discharge, indelibly marked to show that it is a certificate in place of the lost or destroyed certificate. A certificate given under this section may not be accepted as a voucher for the payment of a claim against the United States for pay, bounty, or other allowance, or as evidence in any other case.

CHAPTER 55—MEDICAL AND DENTAL CARE

Sec.

1071. Purpose of [sections 1071-1087] of this [title] *this chapter*.
1072. Definitions.
1073. Administration of [sections 1071-1087 of] this [title] *chapter*.
1074. Medical and dental care for members and certain former members.
1075. Officers and certain enlisted members: subsistence charges.
1076. Medical and dental care for dependents: general rule.
1077. Medical care for dependents: authorized care in facilities of uniformed services.
1078. Medical and dental care for dependents: charges.
1079. Contracts for medical care for spouses and children: plans.
1080. Contracts for medical care for spouses and children: election of facilities.
1081. Contracts for medical care for spouses and children: review and adjustment of payments; reports.
1082. Contracts for health care: advisory committees.
1083. Contracts for medical care for spouses and children: additional hospitalization.
1084. Determinations of dependency.
1085. Medical and dental care from another executive department: reimbursement.
1086. Contracts for health [care] *benefits* for certain members, former members, and their dependents.
1087. Programing facilities for certain members, former members, and their dependents in construction projects of the uniformed services.
1088. Air evacuation patients: furnished subsistence.
1089. Defense of certain suits arising out of medical malpractice.

§ 1071. Purpose of [sections 1071-1087 of this title] *this chapter.*

The purpose of [sections 1071-1087 of this title] *this chapter* is to create and maintain high morale in the uniformed services by providing an improved and uniform program of medical and dental care for members and certain former members of those services, and for their dependents.

§ 1072. Definitions.

In [sections 1071-1087 of this title] *this chapter:*

(1) "Uniformed services" means the armed forces and the Commissioned Corps of the [Environmental Science Services] *National Oceanic and Atmospheric* Administration and of the Public Health Service.

(2) "Dependent", with respect to a member or former member of a uniformed service, means—

(A) the [wife] *spouse*;

(B) the unremarried widow;

[(C) the husband, if he is in fact dependent on the member or former member for over one-half of his support;]

[(D)] *(C)* the unremarried widower[, if, because of mental or physical incapacity he was in fact dependent on the member or former member at the time of her death for over one-half of his support;]*;*

[(E)] *(D)* an unmarried legitimate child, including an adopted child or a stepchild, who either—

(i) has not passed his twenty-first birthday;

(ii) is incapable of self-support because of a mental or physical incapacity that existed before that birthday and is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support; or

(iii) has not passed his twenty-third birthday, is enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Health[, Education, and Welfare] *and Human Services*, as the case may be, and is, or was at the time of the members or former member's death, in fact dependent on him for over one-half of his support; and

[(F)] *(E)* a parent or parent-in-law who is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support and residing in his household.

§ 1073. Administration of [sections 1071-1087 of this title] *this chapter*

Except as otherwise provided in [sections 1071-1087 of this title] *this chapter*, the Secretary of Defense shall administer [those sections] *this chapter* for the armed forces under his jurisdiction, and the Secretary of Health[, Education, and Welfare] *and Human Services* shall administer [them] *this chapter* for the Coast Guard when the Coast Guard is not operating as a service in the Navy and for the [Environmental Science Services] *National Oceanic and Atmospheric* Administration and the Public Health Service.

§ 1074. Medical and dental care for members and certain former members

(a) Under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health[, Education, and Welfare] *and Human Services*, a member of a uniformed service who is on active duty is entitled to medical and dental care in any facility of any uniformed service.

(b) Under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health[, Education, and Welfare] *and Human Services*, a member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay may, upon request, be given medical and dental care in any facility of any uniformed service, subject to the availability of space and facilities and the capabilities of the medical and dental staff. The Secretary of Defense and the Secretary of Health[, Education, and Welfare] *and Human Services* may, with the agreement of the Administrator of Veterans' Affairs provide care to persons covered by this subsection in facilities operated by the Administrator and determined by him to be available for this purpose on a reimbursable basis at rates approved by the [Bureau of the Budget] *President*.

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§ 1076. Medical and dental care for dependents: general rule

(a) A dependent of a member of a uniformed service who is on active duty for a period of more than 30 days, or of such a member who died while on that duty, is entitled, upon request, to the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff.

(b) Under regulations to be prescribed jointly by the Secretary of Defense and the Secretary of Health **[**, Education, and Welfare**]** *and Human Services*, a dependent of a member or former member—

(1) who is, or (if deceased) was at the time of his death, entitled to retired or retainer pay or equivalent pay; or

(2) who died before attaining age 60 and at the time of his death (A) would have been eligible for retired pay under chapter 67 of this title but for the fact that he was under 60 years of age, and (B) had elected to participate in the Survivor Benefit Plan established under subchapter II of chapter 73 of this title;

may, upon request, be given the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff, except that a dependent of a member or former member described in clause (2) may not be given such medical or dental care until the date on which such member or former member would have attained age 60.

(c) A determination by the medical or dental officer in charge, or the contract surgeon in charge, or his designee, as to the availability of space and facilities and to the capabilities of the medical and dental staff is conclusive. Care under this section may not be permitted to interfere with the primary mission of those facilities.

(d) To utilize more effectively the medical and dental facilities of the uniformed services, the Secretary of Defense and the Secretary of Health **[**, Education, and Welfare**]** *and Human Services*, shall prescribe joint regulations to assure that dependents entitled to medical or dental care under this section will not be denied equal opportunity for that care because the facility concerned is that of a uniformed service other than that of the member.

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§ 1078. Medical and dental care for dependents: charges

(a) The Secretary of Defense, after consulting the Secretary of Health **[**, Education, and Welfare**]** *and Human Services*, shall prescribe fair charges for inpatient medical and dental care given to dependents under section 1076 of this title. The charge or charges prescribed shall be applied equally to all classes of dependents.

(b) As a restraint on excessive demands for medical and dental care under section 1076 of this title, uniform minimal charges may be imposed for outpatient care. Charges may not be more than such amounts, if any, as the Secretary of Defense may prescribe after consulting the Secretary of Health **[**, Education, and Welfare**]** *and Human Services*, and after a finding that such charges are necessary.

(c) Amounts received for subsistence and medical and dental care given under section 1076 of this title shall be deposited to the credit of the appropriation supporting the maintenance and operation of the facility furnishing the care.

§ 1079. Contracts for medical care for spouses and children: plans

(a) To assure that medical care is available for spouses and children of members of the uniformed services who are on active duty for a period of more than thirty days, the Secretary of Defense, after consulting with the Secretary of Health[, Education, and Welfare] *and Human Services,* shall contract, under the authority of this section, for medical care for those persons under such insurance, medical service, or health plans as he considers appropriate. The type of health care authorized under this section shall be the same as those provided under section 1076 of this title, except [that:] *that—*

(1) with respect to dental care, only that care required as a necessary adjunct to medical or surgical treatment may be provided;

(2) routine physical examinations and immunizations of dependents over two years of age may only be provided when required in the case of dependents who are traveling outside the United States as a result of a member's duty assignment and such travel is being performed under orders issued by a uniformed service;

(3) eye examinations may not be provided;

(4) under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health[, Education, and Welfare] *and Human Services,* the services of Christian Science practitioners and nurses and services obtained in Christian Science sanatoriums may be provided;

(5) durable equipment, such as wheelchairs, iron lungs and hospital beds may be provided on a rental basis.

(b) Plans covered by subsection (a) shall include provisions for payment by the patient of the following amounts:

(1) $25 for each admission to a hospital, or the amount the patient would have been charged under section 1078(a) of this title had the care being paid for been obtained in a hospital of the uniformed services, whichever amount is the greater.

(2) Except as provided in clause (3), the first $50 each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 [per centum] *percent* of all subsequent charges for such care during a fiscal year.

(3) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $100 each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 [per centum] *percent* of the additional charges for such care during a fiscal year.

(c) The methods for making payment under subsection (b) shall be prescribed under joint regulations issued by the Secretary of Defense and the Secretary of Health[, Education, and Welfare] *and Human Services.*

(d) Under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health[, Education, and Welfare] *and Human Services*, in the case of a dependent, as defined in section 1072(2) (A)[, (C), or (E)] *or (D)* of this title, of a member of the uniformed services on active duty for a period of more than thirty days, who is moderately or severly mentally retarded or who has a serious physical handicap, the plans covered by subsection (a) shall, with respect to the retardation or handicap of such dependent, include the following:

(1) Diagnosis.

(2) Inpatient, outpatient, and home treatment.

(3) Training, rehabilitation, and special education.

(4) Institutional care in private nonprofit, public and State institutions and facilities and, when appropriate, transportation to and from such institutions and facilities.

(e) Members shall be required to share in the cost of any benefits provided their dependents under subsection (d) [.] *as follows:*

(1) Except as provided in clause (3), members in the lowest enlisted pay grade shall be required to pay the first $25 incurred each month and members in the highest commissioned pay grade shall similarly be required to pay $250 per month. The amounts to be similarly paid by members in all other pay grades shall be determined under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health[, Education, and Welfare] *and Human Services.*

(2) Except as provided in clause (4), the Government's share of the cost of any benefits provided in a particular case under subsection (d) shall not exceed $1,000 per month.

(3) Members shall also be required to pay each month that amount, if any, remaining after the Government's maximum share has been reached.

(4) A member who has more than one dependent incurring expenses in a given month under a plan covered by subsection (d) shall not be required to pay an amount greater than he would be required to pay if he had but one such dependent.

(f) To qualify for the benefits provided by subsection (d), members shall be required to use public facilities to the extent they are available and adequate as determined under joint regulations of the Secretary of Defense and the Secretary of Health, Education, and Welfare.

(g) When a member dies while he is eligible for receipt of hostile fire pay under section 310 of title 37[, United States Code,] or from a disease or injury incurred while eligible for such pay, his dependents who are receiving benefits under a plan covered by subsection (d) of this section shall continue to be eligible for such benefits until they pass their twenty-first birthday.

(h) Payment of a charge for physician services for which a claim is submitted under a plan contracted for under subsection (a) may be denied because the charge is in excess of a predetermined charge level based upon customary charges made for similar services in the same locality only to the extent that such charge is in excess of the charge level that, on the basis of statistical data and methodology acceptable to the Secretary of Defense, in consultation with the Secretary of Health, Education, and Welfare, is equivalent to the 90th percentile of the customary charges made for similar services in the same locality during the last preceeding calendar year elapsing before the start of the twelve-month period (beginning July 1 of each year) in which the claim for the paymet is submitted.

§ 1080. Contracts for medical care for spouses and children: election of facilities

A dependent covered by section 1079 of this title may elect to receive medical care either in (1) the facilities of the uniformed services, under the conditions prescribed by sections 1076–1078 of this title, or (2) the facilities provided under a plan contracted for under section 1079 of this title. However, under such regulations as the Secretary of Defense, after consulting the Secretary of Health**[**, Education, and Welfare,**]** *and Human Services,* may prescribe, the right to make this election may be limited for dependents residing in the area where the member concerned is assigned, if adequate medical facilities of the uniformed services are available in that area for those dependents.

§ 1081. Contracts for medical care for spouses and children: review and adjustment of payments; reports

Each plan under section 1079 of this title shall provide for a review, and if necessary an adjustment of payments, by the Secretary of Defense or the Secretary of Health**[**, Education, and Welfare**]** *and Human Services* not later than 120 days after the close of each year the plan is in effect. Not later than 90 days after each such review, the Secretary of Defense shall report to the Committees on Armed Services of the Senate and the House of Representatives the amounts paid during the year covered by the review and the adjustments made.

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§ 1083. Contracts for medical care for spouses and children: additional hospitalization

If a dependent covered by a plan under section 1079 of this title needs hospitalization beyond the time limits in that plan, and if the hospitalization is authorized in medical facilities of the uniformed services, he may be transferred to such a facility for additional hospitalization. If transfer is not feasible, the expenses of additional hospitalization in the civilian facility may be paid under such regulations as the Secretary of Defense may prescribe after consulting the Secretary of Health**[**, Education, and Welfare**]** *and Human Services.*

§ 1084. Determination of dependency

A determination of dependency by the Secretary of Defense or the Secretary of Health**[**, Education, and Welfare**]** *and Human Services* under **[**sections 1071–1087 of this title**]** *this chapter* is conclusive. However, he may change a determination because of new evidence or for other good cause. The Secretary's determination may not be reviewed in any court or by the General Accounting Office, unless there has been fraud or gross negligence.

§ 1085. Medical and dental care from another executive department: reimbursement

If a member or former member of an armed force under the jurisdiction of a military department, or his dependent receives inpatient medical or dental care in a facility under the jurisdiction of the Secretary of Health[, Education, and Welfare] *and Human Services*, or if a member or former member of a uniformed service not under the jurisdiction of a military department, or his dependent, receives inpatient medical or dental care in a facility of an armed force under the jurisdiction of a military department, the appropriation for maintaining and operating the facility furnishing that care shall be reimbursed at rates established by the [Bureau of the Budget] *President* to reflect the average cost of providing such care.

§ 1086. Contracts for health benefits for certain members, former members, and their dependents

(a) To assure that health benefits are available for the persons covered by subsection (c), the Secretary of Defense, after consulting with the Secretary of Health[, Education, and Welfare] *and Human Services*, shall contract under the authority of this section for health benefits for those persons under the same insurance, medical service, or health plans he contracts for under section 1079(a) of this title.

(b) For persons covered by this section the plans contracted for under section 1079(a) of this title shall contain the following provisions for payment by the patient:

(1) Except as provided in clause (2), the first $50 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 [per centum] *percent* of all subsequent charges for such care during a fiscal year.

(2) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $100 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 [per centum] *percent* of the additional charges for such care during a fiscal year.

(3) 25 [per centum] *percent* of the charges for inpatient care.

(c) The following persons are eligible for health benefits under this section:

(1) Those covered by sections 1074(b) and 1076(b) of this title, except those covered by section 1072(2)[(F)]*(E)* of this title.

(2) A dependent of a member of a uniformed service who died while on active duty for a period of more than thirty days, except a dependent covered by section 1072(2)[(F)]*(E)* of this title.

However, a person who is entitled to hospital insurance benefits under [title I of the Social Security Amendments of 1965 (79 Stat. 286)] *part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.)* is not eligible for health benefits under this section.

(d) No benefits shall be payable under any plan covered by this section in the case of a person enrolled in any other insurance, medical service, or health plan provided by law or through employment unless that person certifies that the particular benefit he is claiming is not payable under the other plan.

(e) A person covered by this section may elect to receive benefits either in (1) Government facilities, under the conditions prescribed in sections 1074 and 1076–1078 of this title, or (2) the facilities provided under a plan contracted for under this section. However, under joint regulations issued by the Secretary of Defense and the Secretary of Health[, Education, and Welfare] *and Human Services* the right to make this election may be limited for those persons residing in an area where adequate facilities of the uniformed service are available.

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CHAPTER 57—DECORATIONS AND AWARDS

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§ 1124. Cash awards for suggestions, inventions, or scientific achievements.

(a) * * *

* * * * * * *

(h) For the purposes of this section, a member of the Commissioned Corps of the [Environmental Science Services] *National Oceanic and Atmospheric* Administration or of the Public Health Service who is serving with an armed force shall be treated as if he were a member of that armed force.

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CHAPTER 59—SEPARATION

Sec.
1161. Commissioned officers: limitations on dismissal.
1162. Reserves: discharge.
1163. Reserve components: members; limitations on separation.
1164. Warrant officers: separation for age.
1165. Regular warrant officers: separation during three-year probationary period.
1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance.
[1167. Regular warrant officers: severance pay.]
1168. Discharge or release from active duty: limitations.
1169. Regular enlisted members: limitations on discharge.
1170. Regular enlisted members: minority discharge.
1171. Regular enlisted members: early discharge.
1172. Enlisted members: during war or emergency; discharge.
1173. Enlisted members: discharge for hardship.
1174. Separation pay upon involuntary discharge or release from active duty.

* * * * * * *

§ 1164. Warrant officers: separation for age

(a) Unless retired or separated on or before the expiration of that period, each warrant officer shall be retired or separated from his armed force not later than 60 days after the date when he becomes 62 years of age, except as provided by section 8301 of title 5.

[(c)] *(b)* The Secretary concerned may defer, for not more than four months, the separation under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to be retired or separated under this section.

§ 1165. Regular warrant officers: separation during three-year probationary period

The Secretary concerned may terminate the regular appointment of any permanent regular warrant officer at any time within three years after the date when the officer accepted his original permanent appointment as a warrant officer in that component. A warrant officer who is separated under this section [is not entitled to severance pay, but may be enlisted under section 515 of this title] *is entitled, if eligible therefor, to separation pay under section 1174 or he may be enlisted under section 515 of this title. If such a warrant officer is enlisted under section 515 of this title, he is not entitled to separation pay.*

§ 1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance

(a) Under such regulations as the Secretary concerned may prescribe, and subject to the recommendations of a board of officers or a selection board under section 560 of this title, a permanent regular warrant officer who is eligible for retirement under any provision of law shall be retired under that law if his records and reports establish his unfitness or unsatisfactory performance of duty. If he is not eligible for retirement under any provision of law, but since the date when he accepted his original permanent appointment as a regular warrant officer he has at least three years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114), he shall [be separated with severance pay computed under section 1167(b) of this title], *if eligible therefor, be separated with separation pay under section 1174 of this title or severance pay under section 286a of title 14, as appropriate.* However, instead of being paid *separation pay or* severance pay he may be enlisted under section 515 of this title. If he does not have three years of such service, he shall be separated under section 1165 of this title.

* * * * * * *

[§ 1167. Regular warrant officers: severance pay

[(a) The severance pay of a permanent regular warrant officer who is separated under section 564(a)(3) of this title is computed by multiplying his years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114), but not more than 12, by twice the monthly basic pay to which he is entitled at the time of separation.

[(b) The severance pay of a permanent regular warrant officer who is separated under section 1166 of this title is computed by multiplying his years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114), but not more than 12, by the monthly basic pay to which he is entitled at the time of separation.

[(c) For the purposes of this section, a part of the year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded.

[(d) The acceptance of severance pay under this section does not deprive a person of any retirement benefits from the United States. However, there shall be deducted from each of his retirement payments so much thereof as is based on the service for which he has received severance pay under this section, until the total deductions equal the amount of the severance pay. However, no person is entitled to severance pay under this section in an amount that is more than $15,000.**]**

* * * * * * *

§1174. Separation pay upon involuntary discharge or release from active duty

(a) A regular officer who is discharged under chapter 36 of this title (except under section 630(1)(A) or 643 of such chapter), under section 564 or 6383 of this title, or under section 603 or 604 of the Defense Officer Personnel Management Act and who has completed five or more, but less than twenty, years of active service immediately before that discharge or release is entitled to separation pay computed under subsection (d)(1).

(b) A regular commissioned officer of the Army, Navy, Air Force, or Marine Corps who is discharged under section 630(1)(A), 643, or 1186 of this title, and a regular warrant officer of the Army, Navy, Air Force, or Marine Corps who is separated under section 1165 or 1166 of this title, who has completed five or more, but less than twenty, years of active service immediately before that discharge or separation is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary of the military department concerned, unless the Secretary concerned determines that the conditions under which the officer is discharged or separated do not warrant payment of such pay.

(c) A member of an armed force other than a regular member who on or after the effective date of the Defense Officer Personnel Management Act is discharged or released from active duty and who has completed five or more, but less than twenty, years of active service immediately before that discharge or release is entitled, unless the Secretary concerned determines that the conditions under which the member is discharged or separated do not warrant such pay, to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary concerned, if—

(1) such member's discharge or release from active duty is involuntary; or

(2) such member was not accepted for an additional tour of active duty for which he volunteered.

(d) The amount of separation pay which may be paid to a member under this section is—

(1) 10 percent of the product of (A) his years of active service; and (B) 12 times the monthly basic pay to which he was entitled at the time of his discharge or release from active duty or $30,000, whichever is less; or

(2) one-half of the amount computed under clause (1), but in no event more than $15,000.

(e) A member who—

(1) is discharged or released from active duty at his request;

(2) is released from active duty for training; or

(3) upon discharge or release from active duty, is immediately eligible for retired or retainer pay based on his military service;

is not eligible for separation pay under this section.

(f) In determining a member's years of active service for the purpose of computing separation pay under this section, a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded.

(g)(1) A period for which a member has previously received separation pay under this section or severance pay or readjustment pay under any other provision of law based on service in the armed forces may not be included in determining the years of service that may be counted in computing the separation pay of the member under this section.

(2) The total amount that a member may receive in separation pay under this section and severance pay and readjustment pay under any other provision of law based on service in the armed forces may not exceed $30,000.

(h)(1) A member who has received separation pay under this section, or severance pay or readjustment pay under any other provision of law, based on service in the armed forces, and who later qualifies for retired or retainer pay under this title or title 14 shall have deducted from each payment of such retired or retainer pay so much of such pay as is based on the service for which he received separation pay under this section or severance pay or readjustment pay under any other provision of law until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay received.

(2) A member who has received separation pay under this section, or severance pay or readjustment pay under any other provision of law, based on service in the armed forces shall not be deprived, by reason of his receipt of such separation pay, severance pay, or readjustment pay, of any disability compensation to which he is entitled under the laws administered by the Veterans' Administration, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay, severance pay, and readjustment pay received. Notwithstanding the preceding sentence, no deduction may be made from disability compensation for the amount of any separation pay, severance pay, or readjustment pay received because of an earlier discharge or release from a period of active duty if the disability which is the basis for that disability compensation was incurred or aggravated during a later period of active duty.

(i) The Secretary of Defense shall prescribe regulations, which shall be uniform for the Army, Navy, Air Force, and Marine Corps, for the administration of this section.

CHAPTER 60—SEPARATION OF REGULAR OFFICERS FOR SUBSTANDARD PERFORMANCE OF DUTY OR FOR CERTAIN OTHER REASONS

Sec.
1181. Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons.

1182. Boards of inquiry.
1183. Boards of review.
1184. Removal of officer: action by Secretary upon recommendation of board of review.
1185. Rights and procedures.
1186. Officers considered for removal: voluntary retirement or discharge.
1187. Officers eligible to serve on boards.

§1181. Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons

(a) Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned may at any time convene a board of officers to review the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps to determine whether such officer shall be required, because his performance of duty has fallen below standards prescribed by the Secretary of Defense, to show cause for his retention on active duty.

(b) Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned may at any time convene a board of officers to review the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps to determine whether such officer should be required, because of misconduct, because of moral or professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on active duty.

§1182. Boards of inquiry

(a) The Secretary of the military department concerned shall convene boards of inquiry at such times and places as the Secretary may prescribe to receive evidence and make findings and recommendations as to whether an officer who is required under section 1181 of this title to show cause for retention on active duty should be retained on active duty. Each board of inquiry shall be composed of not less than three officers having the qualifications prescribed by section 1187 of this title.

(b) A board of inquiry shall give a fair and impartial hearing to each officer required under section 1181 of this title to show cause for retention on active duty.

(c) If a board of inquiry determines that the officer has failed to establish that he should be retained on active duty, it shall send the record of its proceedings to a board of review convened under section 1183 of this title.

(d)(1) If a board of inquiry determines that the officer has established that he should be retained on active duty, the officer's case is closed.

(2) An officer who is required to show cause for retention on active duty under subsection (a) of section 1181 of this title and who is determined under paragraph (1) to have established that he should be retained on active duty may not again be required to show cause for retention on active duty under such subsection within the one-year period beginning on the date of that determination.

(3)(A) Subject to subparagraph (B), an officer who is required to show cause for retention on active duty under subsection (b) of section 1181 of this title and who is determined under paragraph (1) to have established that he should be retained on active duty may again be required to show cause for retention at any time.

(B) An officer who has been required to show cause for retention on active duty under subsection (b) of section 1181 of this title and who is thereafter retained on active duty may not again be required to show cause for retention on active duty under such subsection solely because of conduct which was the subject of the previous proceedings, unless the findings or recommendations of the board of inquiry that considered his case are determined to have been obtained by fraud or collusion.

§1183. Boards of review

(a) The Secretary of the military department concerned shall convene boards of review at such times as the Secretary may prescribe to review the cases of officers who a board of inquiry has determined have failed to establish that they should be retained on active duty. Each board of review shall be composed of not less than three officers having the qualifications prescribed by section 1187 of this title.

(b) If, after reviewing the record of the case of any officer, a board of review determines that the officer has failed to establish that he should be retained on active duty, the board of review shall recommend to the Secretary concerned that the officer not be retained on active duty.

(c)(1) If, after reviewing the record of the case of any officer, a board of review determines that the officer has established that he should be retained on active duty, the officer's case is closed.

(2) An officer who is required to show cause for retention under subsection (a) of section 1181 of this title and who is determined under paragraph (1) to have established that he should be retained on active duty may not again be required to show cause for retention under such subsection within the one-year period beginning on the date of that determination.

(3)(A) Subject to subparagraph (B), an officer who is required to show cause for retention under subsection (b) of section 1181 of this title and who is determined under paragraph (1) to have established that he should be retained on active duty may again be required to show cause for retention at any time.

(B) An officer who has been required to show cause for retention as a result of proceedings under subsection (b) of section 1181 of this title and who is thereafter retained on active duty may not again be required to show cause for retention on active duty under such subsection solely because of conduct which was the subject of the previous proceeding, unless the findings or recommendations of the board of inquiry or board of review that considered his case are determined to have been obtained by fraud or collusion.

§1184. Removal of officer: action by Secretary upon recommendation of board of review

The Secretary of the military department concerned may remove an officer from active duty if the removal of such officer from active *duty is recommended by a board of review convened under section 1183 of this title.*

§1185. Rights and procedures

(a) Under regulations prescribed by the Secretary of Defense, each officer required under section 1181 of this title to show cause for retention on active duty—

(1) shall be notified in writing, at least 30 days before the hearing of his case by a board of inquiry, of the reasons for which he is being required to show cause for retention on active duty;

(2) shall be allowed a reasonable time, as determined by the board of inquiry, to prepare his showing of cause for his retention on active duty;

(3) shall be allowed to appear in person and to be represented by counsel at proceedings before the board of inquiry; and

(4) shall be allowed full access to, and shall be furnished copies of, records relevant to his case, except that the board of inquiry shall withhold any record that the Secretary concerned determines should be withheld in the interest of national security.

(b) When a record is withheld under subsection (a)(4), the officer whose case is under consideration shall, to the extent that the interest of national security permits, be furnished a summary of the record so withheld.

§1186. Officer considered for removal: voluntary retirement or discharge

(a) At any time during proceedings under this chapter with respect to the removal of an officer from active duty, the Secretary of the military department concerned may grant a request by the officer—

(1) for voluntary retirement, if the officer is qualified for retirement; or

(2) for discharge in accordance with subsection (b)(2).

(b) An officer removed from active duty under section 1184 of this title shall—

(1) if eligible for voluntary retirement under any provision of law on the date of such removal, be retired in the grade and with the retired pay for which he would be eligible if retired under such provision; and

(2) if ineligible for voluntary retirement under any provision of law on the date of such removal—

(A) be honorably discharged in the grade then held, in the case of an officer whose case was brought under subsection (a) of section 1181 of this title; or

(B) be discharged in the grade then held, in the case of an officer whose case was brought under subsection (b) of section 1181 of this title.

(c) An officer who is discharged under subsection (b)(2) is entitled, if eligible therefor, to separation pay under section 1174(b) of this title.

§1187. Officers eligible to serve on boards

(a)(1) Each officer who serves on a board convened under this chapter shall be an officer of the same armed force as the officer being required to show cause for retention on active duty.

(2) Except as provided in paragraph (3), an officer may not serve on a board under this chapter unless such officer is serving on active duty in a grade above lieutenant colonel or commander and is senior in grade and rank to any officer considered by that board.

(3) If qualified officers on active duty are not available in sufficient numbers to comprise a board convened under this chapter, the Secretary of the military department concerned shall complete the membership of the board by appointing retired officers of the same armed force who are retired in a grade above lieutenant colonel or commander and whose retired grade is senior to the grade of any officer considered by the board. A retired general or flag officer who is on active duty for the purpose of serving on a board convened under this chapter shall not, while so serving, be counted against any limitation on the number of general and flag officers who may be on active duty.

(b) No person may be a member of more than one board convened under this chapter to consider the same officer.

CHAPTER 61—RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

* * * * * * *

§1201. Regulars and members on active duty for more than 30 days: retirement

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also determines that—

(1) based upon accepted medical principles, the disability is of a permanent nature;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(3) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination; and either—

(i) the member has at least eight years of service computed under section 1208 of this title;

(ii) the disability is the proximate result of performing active duty;

(iii) the disability was incurred in line of duty in time of war or national emergency; or

(iv) the disability was incurred in line of duty [during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect] *after September 14, 1978.*

* * * * * * *

§ 1203. Regulars and members on active duty for more than 30 days; separation

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—

(1) * * *

* * * * * * *

(4) either—

(A) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and the disability was (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, or (iii) incurred in line of duty [during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect] *after September 14, 1978;*

(B) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and the member has at least eight years of service computed under section 1208 of this title, or

(C) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, the disability was neither (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, nor (iii) incurred in line of duty [during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect**]** *after September 14, 1978;* and the member has less than eight years of service computed under section 1208 of this title on the date when he would otherwise be retired under section 1201 of this title or placed on the temporary disability retired list under section 1202 of this title.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

* * * * * * *

§ 1208. Computation of service

(a) For the purposes of this chapter, a member of a regular component shall be credited with the service described in clause (1) or that described in clause (2), whichever is greater:

(1) The service that he is considered to have for the purpose of separation or mandatory elimination from the active list *or* active-duty list.

(2) The sum of—

(A) his active service as a member of the armed forces, a nurse, a reserve nurse after February 2, 1901, a contract surgeon, a contract dental surgeon, or an acting dental surgeon;

(B) his active service as a member of the **[**Environmental Science Services**]** *National Oceanic and Atmospheric* Administration or the Public Health Service; and

(C) his service while participating in exercises or performing duties under sections 502, 503, 504, and 505 of title 32.

For the purpose of clause (2)(B) of this subsection, active service as a member of the **[**Environmental Science Services Administration includes active service as a member**]** *National Oceanic and Atmospheric Administration includes active service as a member of the Environmental Science Services Administration and* of the Coast and Geodetic Survey.

* * * * * * *

§ 1211. Members on temporary disability retired list: return to active duty; promotion

(a) With his consent, any member of the Army or the Air Force whose name is on the temporary disability retired list, and who is found to be physically fit to perform the duties of his office, grade, or rank under section 1210(f) of this title, shall—

(1) if a commissioned officer of a regular component, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to the **[**active list of his regular component**]** *active-duty list* in the regular grade held by him when his name was placed on the temporary disability retired list, or in the next higher regular grade.

* * * * * * *

§ 1212. Disability severance pay

(a) Upon separation from his armed force under section 1203 or 1206 of this title, a member is entitled to disability severance pay computed by multiplying (1) his years of service, but not more than 12, computed under section 1208 of this title, by (2) the highest of the following amounts:

(A) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when he is separated and (ii) in the grade and rank in which he was serving on the date when his name was placed on the temporary disability retired list, or if his name was not carried on that list, on the date when he is separated.

(B) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in any temporary grade or rank higher than that described in clause (A), in which he served satisfactorily as determined by the Secretary of the military department or the Secretary of **[**the Treasury**]** *Transportation*, as the case may be, having jurisdiction over the armed force from which he is separated.

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§ 1213. Effect of separation on benefits and claims

Unless a person who has received disability severance pay again becomes a member of an armed force, the **[**Environmental Science Services**]** *National Oceanic and Atmospheric* Administration, or the Public Health Service, he is not entitled to any payment from the armed force from which he was separated for, or arising out of, his service before separation, under any law administered by one of those services or for it by another of those services. However, this section does not prohibit the payment of money to a person who has received disability severance pay, if the money was due him on the date of his separation or if a claim by him is allowed under any law.

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§ 1216. Secretaries: powers, functions, and duties

(a) * * *

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(d) The Secretary concerned may not, with respect to any member who is in pay grade O-7 or higher or is a Medical Corps officer or medical officer of the Air Force being processed for retirement under any provisions of this title by reason of age or length of service—

(1) retire such member under section 1201 of this title;

(2) place such member on the temporary disability retired list pursuant to section 1202 of this title; or

(3) separate such member from an armed force pursuant to section 1203 of this title by reason of unfitness to perform the duties of his office, grade, rank, or rating unless the determination of the Secretary concerned with respect to unfitness is

first approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for [Health and Environment] *Health Affairs.*

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CHAPTER 63—RETIREMENT FOR AGE

Sec.
1251. Age 62: regular commissioned officers; exceptions.
1263. Age 62: warrant officers.
1275. Computation of retired pay: law applicable.

* * * * * * *

§ 1251. Age 62: regular commissioned officers; exceptions

(a) Unless retired or separated earlier, each regular commissioned officer of the Army, Navy, Air Force, or Marine Corps (other than an officer who is a permanent professor, director of admissions, or registrar of the United States Military Academy or United States Air Force Academy or a commissioned warrant officer) shall be retired on the first day of the month following the month in which he becomes 62 years of age. An officer who is a permanent professor at the United States Military Academy or United States Air Force Academy, the director of admissions at the United States Military Academy, or the registrar of the United States Air Force Academy shall be retired on the first day of the month following the month in which he becomes 64 years of age.

(b) Notwithstanding subsection (a), the President may defer the retirement of an officer serving in a position that carries a grade above major general or rear admiral, but such a deferment may not extend beyond the first day of the month following the month in which the officer becomes 64 years of age. Not more than ten deferments of retirement under this subsection may be in effect at any one time.

§ 1263. Age 62: warrant officers

(a) Unless retired under section 1305 of this title, a permanent regular warrant officer who has at least 20 years of active service that could be credited to him under section [311 of title 37] *511 of the Career Compensation Act of 1949, as amended (70 Stat. 114; 10 U.S.C. 564 note),* and who is at least 62 years of age, shall be retired 60 days after he becomes that age, except as provided by section 8301 of title 5.

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CHAPTER 65—RETIREMENT *OF WARRANT OFFICERS* FOR LENGTH OF SERVICE

Sec.
1293. Twenty years or more: warrant officers.
1305. Thirty years or more: regular warrant officers.
1315. Computation of retired pay: law applicable.

§ 1331. Age and service requirements

(a) * * *

(b) Application for retired pay under this section must be made to the Secretary of the military department, or the Secretary of **[**the Treasury**]** *Transportation,* as the case may be, having jurisdiction at the time of application over the armed force in which the applicant is serving or last served.

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(e) Notwithstanding section 8301 of title 5, **[**United States Code,**]** the date of entitlement to retired pay under this section shall be the date on which the requirements of subsection (a) have been completed.

§ 1332. Computation of years of service in determining entitlement to retired pay

(a) Except as provided in subsection (b), for the purpose of determining whether a person is entitled to retired pay under section 1331 of this title, his years of service are computed by adding—

(1) * * *

* * * * * * *

(4) his years of active commissioned service in the **[**Coast and Geodetic Survey**]** *National Oceanic and Atmospheric Administration (including active commissioned service in the Environmental Science Services Administration and in the Coast and Geodetic Survey)* during such time as he was transferred to the service and jurisdiction of a military department **[**pursuant to**]** *under* section 16 of the Act of May 22, 1917 (33 U.S.C. 855).

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CHAPTER 69—RETIRED GRADE

Sec.
1370. Commissioned officers: general rule; exceptions.
1371. Warrant officers: general rule.
1372. Grade on retirement for physical disability: members of armed forces.
1373. Higher grade for later physical disability: retired officers recalled to active duty.
1374. Reserve commissioned officers: grade on retirement or transfer to Retired Reserve.
1375. Entitlement to commission: commissioned officers advanced on retired list.
1376. Retired lists.

§ 1370. Commissioned officers: general rule; exceptions

(a)(1) Unless entitled to a higher retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, or Marine Corps who retires under any provision of law other than chapter 61 or chapter 67 of this title shall, except as provided in paragraph (2), be retired in the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(2) In order to be eligible for voluntary retirement under any provision of this title in a grade above major or lieutenant commander and below lieutenant general or vice admiral, a commissioned officer of the Army, Navy, Air Force, or Marine Corps must have served on active duty in that grade for not less than three years. The President may waive the preceding sentence in individual cases involving

extreme hardship or exceptional or ususual circumstances. The authority of the President under the preceding sentence may not be delegated.

(3) A reserve or temporary officer who is notified that he will be released from active duty without his consent and thereafter requests retirement under section 3911, 6323, or 8911 of this title and is retired pursuant to that request is considered for purposes of this section, to have been retired involuntarily. An officer retired pursuant to section 1186(b)(1) of this title is considered for purposes of this section to have been retired voluntarily.

(b) An officer whose length of service in the highest grade he held while on active duty does not meet the service in grade requirements specified in subsection (a) shall be retired in the next lower grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(c) Upon retirement, an officer of the Army, Navy, Air Force, or Marine Corps who is serving in or has served in a position of importance and responsibility designated by the President to carry the grade of general or admiral or lieutenant general or vice admiral under section 601 of this title may, in the discretion of the President, be retired, by and with the advice and consent of the Senate, in the highest grade held by him while serving on active duty.

* * * * * * *

CHAPTER 71—COMPUTATION OF RETIRED PAY

Sec.
1401. Computation of retired pay.
1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index.
1402. Recomputation of retired or retainer pay to reflect later active duty.
1402s. Recomputation of retired or retainer pay to reflect later active duty in case of members who first became members after [the enactment of the Department of Defense Authorization Act, 1981] *September 7, 1980.*
1403. Disability retired pay: treatment under [title 26] *Internal Revenue Code of 1954.*
1404. Applicability of section 8301 of title 5.
1405. Years of service.
1406. Limitations on revocation of retired pay.
1407. Retired pay base.

§ 1401. Computation of retired pay

The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed "For sections", retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, 3, and 4, as modified by the applicable footnotes. However, if a person would otherwise be entitled to retired pay computed under more than one pay formula of this table or of any other provision of law, he is entitled to be paid under the applicable formula that is most favorable to him. Section references below are to sections of this title.

		Column 1	Column 2	Column 3	Column 4
Formula No.	For sections	For a person who first became a member of a uniformed service (as defined in section 1407(a)(2) [of this title) on or after the date of the enactment of the Department of Defense Authorization Act, 1981] *after September 7, 1980,* take the monthly retired pay base as computed under section 1407(b). For all others, take	Multiply by	Add	Subtract
1	1201 1204	Monthly basic pay [1] of grade to which member is entitled under section 1372 or to which he was entitled on day before retirement or placement on temporary disability retired list, whichever is higher.[4]	As member elects— (1) 2½% of years of service credited to him under section 1208; [3] or (2) the percentage of disability on date when retired.		Excess over 75% of pay upon which computation is based.
2	1202 1205	Monthly basic pay [1] of grade to which member is entitled under section 1372 or to which he was entitled on day before retirement or placement on temporary disability retired list, whichever is higher.[4]	As member elects— (1) 2½% of years of service credited to him under section 1208; [3] or (2) the percentage of disability on date when his name was placed on temporary disability retired list.	Amount necessary to [4]increase product of columns 1 and 2 to 50% of pay upon which computation is based.	Excess over 75% of pay upon which computation is based.
3	1331	Monthly basic pay [2] of highest grade held satisfactorily by person at any time in the armed forces.	2½% of years of service credited to him under section 1333.		Excess over 75% of pay upon which computation is based

—Continued

		Column 1	Column 2	Column 3	Column 4
Formula No.	For sections	For a person who first became a member of a uniformed service (as defined in section 1407(a)(2) [of this title) on or after the date of the enactment of the Department of Defense Authorization Act, 1981]) *after September 7, 1980,* take the monthly retired pay base as computed under section 1407(b). For all others, take	Multiply by	Add	Subtract
4	564 [1255] 1263 1293 1305	Monthly basic pay to which member would have been entitled if he had served on active duty in his retired grade on day before retirement, or if the pay of that grade[5] is less than the pay of any warrant grade satisfactorily held by him on active duty, the monthly basic pay of that warrant officer grade.	2½% of years of service that may be credited to him under section 1405 of this title.[3]		Excess over 75% of pay upon which computation is based.
5	*633* *634* *635* *636* *1251*	*Monthly basic pay[1] of member's retired grade.[5]*	*2½% of years of service credited under section 1405.[3]*		*Excess over 75% of pay upon which computation is based.*

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[1] Compute at rates applicable on date of retirement or date when member's name was placed on temporary disability retired list, as the case may be.

[2] Compute at rates applicable on date when retired pay is granted.

[3] Before applying a percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months.

[4] For an officer who served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, compute at the highest rates of basic pay applicable to him while he served in that office. For an enlisted person who has served as sergeant major of the Army, [senior enlisted advisor] *master chief petty officer* of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, compute at the highest rate of basic pay applicable to him while he so served, if that rate is higher than the rate authorized by the table.

[5] *For the purposes of this section, determine an officer's retired grade as if sections 3962(b) and 8962(b) did not apply.*

* * * * * * *

§ 1402. Recomputation of retired or retainer pay to reflect later active duty

(a) A member of an armed force who first became a member of [the armed forces] *a uniformed service (as defined in section 1407(a)(2) of this title)* before [the date of the enactment of the Department of Defense Authorization Act, 1981] *September 8, 1980,* who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his retired pay or retainer pay upon his release from that duty as follows:

* * * * * * *

(b) A member of an armed force who first became a member of [the armed forces] *a uniformed service (as defined in section 1407(a)(2) of this title)* before [the date of the enactment of the Department of Defense Authorization Act, 1981] *September 8, 1980,* who has been retired other than for physical disability, and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay under subsection (d).

(c) A member of an armed force who first became a member of [the armed forces] *a uniformed service (as defined in section 1407(a)(2) of this title)* before [the date of the enactment of the Department of Defense Authorization Act, 1981] *September 8, 1980,* who—

(1) was retired for physical disability under section 1201 or 1204 of this title or any other law or whose name is on the temporary disability retired list;

(2) incurs, while on active duty after retirement or after his name was placed on that list, a physical disability that is in addition to or that aggravates the physical disability for which he was retired or for which his name was placed on the temporary disability retired list; and

(3) is qualified under section 1201, 1202, 1204, or 1205 of this title;

is entitled, upon his release from active duty, to retired pay under subsection (d).

* * * * * * *

§ 1402a. Recomputation of retired or retainer pay to reflect later active duty in case of members who first became members after [the enactment of the Department of Defense Authorization Act, 1981] *September 7, 1980*

(a) A member of an armed force who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) [on or after the date of the enactment of the Department of Defense Authorization Act, 1981] *after September 7, 1980,* who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his retired pay or retainer pay upon his release from that duty as follows:

* * * * * * *

(b) A member of an armed force who first became a member of a uniformed service [on or after the date of the enactment of the Department of Defense Authorization Act, 1981] *after September 7, 1980*, who has been retired other than for physical disability and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay under subsection (d).

(c) A member of an armed force who first became a member of a uniformed service [on or after the date of the enactment of the Department of Defense Authorization Act, 1981] *after September 7, 1980*, and who—

"(1) * * *

* * * * * * *

§1403. Disability retired pay: treatment under [title 26] *Internal Revenue Code of 1954*

That part of the retired pay of a member of an armed force, computed under formula No. 1 or 2 of section 1401, or under section 1402(d) or 1402a(d), of this title on the basis of years of service, which exceeds the retired pay that he would receive if it were computed on the basis of percentage of disability is not considered as a pension, annuity, or similar allowance for personal injury, or sickness, resulting from active service in the armed forces, under section 104(a) of [title 26] *Internal Revenue Code of 1954*.

* * * * * * *

§1405. Years of service

[For the purposes of section 1401 (formula 4), 3888(1), 3927(b)(1), 3991 (formula B), 6151(b), 6323(e), 6325 (a)(2) and (b)(2), 6381(a)(2), 6383(c)(2), 6390(b)(2), 6394(h), 6396(c)(2), 6398(b)(2), 6400(b)(2), 8888(1), 8927(b)(1), or 8991 (formula B) of this title, the years of service of a member of the armed forces are computed by adding—

[(1) his years of active service:

[(2) the years of service credited to him under section 205(a)(7) and (8) of title 37;

[(3) the years of service, not included in clause (1) or (2) with which he was entitled to be credited, on the day before the effective date of this section, in computing his basic pay; and

[(4) the years of service, not included in clause (1), (2), or (3), with which he would be entitled to be credited under section 1333 of this title, if he were entitled to retired pay under section 1331 of this title.

For the purpose of this section, a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.]

For the purposes of section 1401 (formulas 4 and 5), 3991 (formula B), 6151(b), 6323(e), 6325 (a)(2) and (b)(2), 6383(c)(2), or 8991 (formula B) of this title, the years of service of a member of the armed forces are computed by adding—

(1) his years of active service;

(2) the years of service, not included in clause (1), with which he was entitled to be credited on May 31, 1958, in computing his basic pay; and

(3) the years of service, not included in clause (1) or (2), with which he would be entitled to be credited under section 1333 of this title if he were entitled to retired pay under section 1331 of this title.

* * * * * * *

§ 1407. Retired pay base

(a)(1) The retired pay or retainer pay of any person who first became a member of a uniformed service **[**on or after the date of the enactment of the Department of Defense Authorization Act, 1981**]**, *after September 7, 1980,* is determined using the monthly retired pay base on monthly retainer pay base computed under this section. In making any computation under this section, the rates of basic pay to be used are those most favorable to the member.

(b)(1) * * *

* * * * * * *

(4) In the case of a member who is retired under section 564, *633, 634, 635, 636, 1251,* 1263, 1293, or 1305 of this title, the monthly retired pay base is 1/36th of the total amount of monthly basic pay which the member received for any 36 months (whether or not consecutive) of active duty as a member of a uniformed service.

* * * * * * *

(d)(1) In the case of a member whose retired pay is computed under section 6322, 6323, 6325, 6326, **[**6381**]** *or* 6383**[**, 6390, 6394, 6396, 6398, or 6400**]** of this title or who is advanced on the retired list under section 6151 of this title, the monthly retired pay base is one thirty-sixth of the total amount of monthly basic pay which the member received for any 36 months (whether or not consecutive) of active duty as a member of a uniformed service.

* * * * * * *

CHAPTER 73—ANNUITIES BASED ON RETIRED OR RETAINER PAY[; SURVIVOR BENEFIT PLAN]

Subchapter		Sec.
I.	Retired Serviceman's Family Protection Plan	1431
II.	Survivor Benefit Plan	1447

SUBCHAPTER I—RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

* * * * * * *

§ 1431. Election of annuity: members of armed forces

(a) * * *

(b) To provide an annuity under section 1434 of this title, a person covered by subsection (a) may elect to receive a reduced amount of the retired pay or retainer pay to which he may become entitled as a result of service in his armed force. Except as otherwise provided in this section, unless it is made before he completes nineteen years of service for which he is entitled to credit in the computation of his basic pay, the election must be made at least two years before the first day for which retired pay or retainer pay is granted. However, if, because of military operations, a member is assigned to an isolated station or is missing, interned in a neutral country, captured by a hostile force, or beleaguered or besieged, and for that reason is unable to make an election before completing nineteen years of that service, he may make the election, to become effective immediately, within one year after he ceases to be assigned to that station or returns to the jurisdiction of his armed force, as the case may be. A member to whom retired pay or retainer pay is granted retroactively, and who is otherwise eligible to make an election, may make the election within ninety days after receiving notice that such pay has been granted to him. An election made after **[**the date of enactment of this amendment**]** *August 13, 1968,* is not effective if—

(1) the elector dies during the first thirty-day period he is entitled to retired pay as a result of a physical condition which led to his being granted retired pay under chapter 61 of title 10 with a disability of 100 per centum under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination of the per centum of his disability;

(2) the disability was not the result of injury or disease received in line of duty as a direct result of armed conflict; and

(3) his widow or children are entitled to dependency and indemnity compensation under chapter 13 of title 38 based upon his death.

* * * * * * *

§ 1434. Kinds of annuities that may be elected

(a) The annuity that a person is entitled to elect under section 1431 or 1432 of this title shall, in conformance with actuarial tables selected by the Board of Actuaries under section 1436(a) of this title, be the amount specified by the elector at the time of the election, but not more than 50 **[**per centum**]** *percent* nor less than 12½ **[**per centum**]** *percent* of his retired or retainer pay, in no case less than $25. He may make the annuity payable—

(1) to, or on behalf of, the surviving spouse, ending when the spouse dies or, if the spouse remarries before age 60, when the spouse remarries;

(2) in equal shares to, or on behalf of, the surviving children eligible for the annuity at the time each payment is due, ending when there is no surviving eligible child; or

(3) to, or on behalf of, the surviving spouse, and after the death of that spouse or the remarriage of that spouse before age 60, in equal shares to, or on behalf of, the surviving eligible children, ending when there is no surviving eligible child.

(b) A person may elect to provide both the annuity provided in clause (1) of subsection (a) and that provided in clause (2) of subsection (a), but the combined amount of the annuities may not be more than 50 **[**per centum**]** *percent* nor less than 12½ **[**per centum**]** *percent* of his retired or retainer pay but in no case less than $25.

* * * * * * *

§ 1437. Payment of annuity

(a) Except as provided in subsection (b) each annuity payable under this subchapter accrues as of the first day of the month in which the person upon whose pay the annuity is based dies. Payment shall be made in equal installments and not later than the fifteenth day of each month following that month. However, no annuity accrues for the month in which entitlement thereto ends.

(b) Each annuity payable to or on behalf of an eligible child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) as defined in section 1435(2)(B) of this title who is at least eighteen years of age and pursuing a full-time course of study or training at a recognized educational institution, accrues—

(1) as of the first day of the month in which the member upon whose pay the annuity is based dies, if the eligible child's eighteenth birthday occurs in the same or a preceding month.

(2) as of the first day of the month in which the eighteenth birthday of an eligible child occurs, if the member upon whose pay the annuity is based died in a preceding month.

(3) as of the first day of the month in which a child first becomes or again becomes eligible, if that eligible child's eighteenth birthday and the death of the member upon whose pay the annuity is based both occurred in a preceding month or months.

However, no such annuity is payable or accrues for any month [prior to the effective date of this subsection] *before November 1, 1968.*

* * * * * * *

§ 1444. Regulations; determinations

(a) The President shall prescribe regulations to carry out this subchapter. Those regulations shall, so far as practicable, be uniform for the armed forces, the [Environmental Science Services] *National Oceanic and Atmospheric* Administration, and the Public Health Service.

[(c)] *(b)* Determinations and certifications of eligibility for, and payments of, annuities and other payments or refunds under this subchapter shall be made by the department concerned. However, in the case of a department other than a military department, payments shall be made through the disbursing facilities of the Department of the Treasury.

* * * * * * *

CHAPTER 75—DEATH BENEFITS

* * * * * * *

§ 1475. Death gratuity: death of members on active duty or inactive duty training and of certain other persons

(a) Except as provided in section 1480 of this title, the Secretary concerned shall have a death gratuity paid to or for the survivor prescribed by section 1477 of this title, immediately upon receiving official notification of the death of—

(1) * * *

* * * * * * *

(5) a person who dies while traveling to or from or while at a place for final acceptance, or for entry upon active duty (other than for training), in an armed force, who has been ordered or directed to go to that place, and who—

(A) has been provisionally accepted for that duty; or

(B) has been selected, under the [Universal Military Training and Service Act (50 App. U.S.C. 451 et seq.)] *Military Selective Service Act (50 U.S.C. App. 451 et seq.)*, for service in that armed force.

* * * * * * *

CHAPTER 79—CORRECTION OF MILITARY RECORDS

* * * * * * *

§ 1552. Correction of military records: claims incident thereto

(a) the Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice. Under procedures prescribed by him, the Secretary of [the Treasury] *Transportation* may in the same manner correct any military record of the Coast Guard. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

* * * * * * *

PART III—TRAINING

Chap. Sec.
101. Training Generally 2001
102. Junior Reserve Officers' Corps 2031
103. Senior Reserve Officers' Training Corps 2101
104. Uniformed Services University of the Health Sciences 2112
105. Armed Forces Health Professions Scholarship Program 2120
106. Educational Assistance for Enlisted Members of the Selected Reserve of the Ready Reserve 2131
107. Educational [assistance for persons enlisting for active duty] *Assistance for Persons Enlisting for Active Duty* 2141
108. Granting of Advanced Degrees at Department of Defense Schools 2161

* * * * * * *

CHAPTER 103—SENIOR RESERVE OFFICERS' TRAINING CORPS

* * * * * * *

§ 2107. Financial assistance program for specially selected members

(a) * * *

* * * * * * *

(e) The date of rank of officers appointed under this section in May or June of any year is the date of graduation of cadets or midshipmen from the United States [Military] *Military* Academy, the United States Naval Academy, or the United States Air Force Academy, as the case may be in that year. The Secretary of the military department concerned shall establish the date of rank of all other officers appointed under this section.

* * * * * * *

(h) Not more than the following numbers of cadets and midshipmen appointed under [section 2107 of this title] *this section* may be in the financial assistance programs at any one time:

Army program: 12,000.
Navy program: 6,000.
Air Force program: 6,500.

* * * * * * *

CHAPTER 104—UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

* * * * * * *

§ 2112. Establishment

(a) There is hereby authorized to be established within 25 miles of the District of Columbia a Uniformed Services University of the Health Sciences (hereinafter *in this chapter* referred to as the "University"), at a site or sites to be selected by the Secretary of Defense, with authority to grant appropriate advanced degrees. It shall be so organized as to graduate not less than 100 medical students annually, with the first class graduating not later than [10 years after the date of the enactment of this chapter] *September 21, 1982.*

* * * * * * *

§ 2113. Board of Regents

(a) The business of the University shall be conducted by a Board of Regents (hereinafter *in this chapter* referred to as the "Board") with funds appropriated for and provided by the Department of Defense. The Board shall consist of—

(1) nine persons outstanding in the fields of health and health education who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate;

(2) the Secretary of Defense, or his designee, who shall be an ex officio member;

(3) the surgeons general of the uniformed services, who shall be ex officio members; and

(4) the person referred to in subsection (d).

* * * * * * *

(d) The Board shall appoint a Dean of the University (hereinafter *in this chapter* referred to as the "Dean") who shall also serve as a nonvoting ex officio member of the Board.

* * * * * * *

§ 2114. Students: selection; status; obligation

(a) * * *

(b) Students shall be commissioned officers of a uniformed service as determined under regulations prescribed by the Secretary of Defense after consulting with the Secretary of Health[, Education, and Welfare] *and Human Services*. Notwithstanding any other provision of law, they shall serve on active duty in pay grade O-1 with full pay and allowances of that grade[, but shall not be counted against any prescribed military strengths]. Upon graduation they shall be appointed in a regular component, if qualified, unless they are covered by section 2115 of this title. Students who graduate shall be required, except as provided in section 2115 of this title, to serve thereafter on active duty under such regulations as the Secretary of Defense or the Secretary of Health[, Education, and Welfare] *and Human Services*, as appropriate, may prescribe for not less than seven years, unless sooner released. The service credit exclusions specified in section 2126 of this title shall apply to students covered by this section.

* * * * * * *

CHAPTER 105—ARMED FORCES HEALTH PROFESSIONS SCHOLARSHIP

Sec.
2120. Definitions.
2121. Establishment.
2122. Eligibility for participation.
2123. Members of the program[;]*:* active duty obligation; failure to complete training; release from program.
2124. Members of the program[;]*:* numbers appointed.
2125. Members of the program[;]*:* exclusion from authorized strengths.
2126. Members of the program[;]*:* service credit.
2127. Contracts for scholarships[;]*:* payments.

* * * * * * *

§ 2123. Members of the program; active duty obligation; failure to complete training; release from program

(a) * * *

* * * * * * *

(e) Any member of the program relieved of his active duty obligation under this chapter before the completion of such obligation may, under regulations prescribed by the Secretary of Defense, be assigned to an area of health manpower shortage designated by the Secretary of Health[, Education, and Welfare] *and Human Services* for a period equal to the period of obligation from which he was relieved.

* * * * * * *

§ 2126. Members of the program: service credit

Service performed while a member of the program shall not be counted—

(1) in determining eligibility for retirement other than by reason of a physical disability incurred while on active duty as a member of the program; or

(2) in computing years of service creditable under section 205[, other than subsection (a)(7) and (8),] of title 37.

§ 2127. Contracts for scholarships: payments

(a) * * *

*   *   *   *   *   *   *

(d) When the Secretary of Defense determines, under regulations prescribed by the Secretary of Health[, Education and Welfare] *and Human Services*, that an accredited civilian educational institution has increased its total enrollment for the sole purpose of accepting members of the program covered by this chapter, he may provide under a contract with such an institution for additional payments to cover the portion of the increased costs of the additional enrollment which are not covered by the institution's normal tuition and fees.

*   *   *   *   *   *   *

CHAPTER 106—EDUCATIONAL ASSISTANCE FOR ENLISTED MEMBERS OF THE SELECTED RESERVE OF THE READY RESERVE

*   *   *   *   *   *   *

§ 2131. Educational assistance program: establishment; amount

(a) To encourage enlistments in units of the Selected Reserve of the Ready Reserve, the Secretary of each military department, under regulations prescribed by the Secretary of Defense, and the Secretary of Transportation, under regulations prescribed by him with respect to the Coast Guard when it is not operating as a service in the Navy, may establish and maintain a program to provide educational assistance to enlisted members of the Selected Reserve of the Ready Reserve of the armed [force] *forces* under his jurisdiction.

(b)(1) * * *

(2) To receive assistance under this section, a member must be eligible for such assistance under section 2132 *of this title* and must submit an application for such assistance in such form and manner as the Secretary concerned shall prescribe and be approved for such assistance by the Secretary concerned.

*   *   *   *   *   *   *

(d) For purposes of this section, the term "accredited institution" means a civilian college, university, or trade, technical, or vocational school in the United States (including the District of Columbia, Puerto Rico, Guam, and the Virgin Islands) that provides education at the postsecondary level and that is accredited by a nationally recognized accrediting agency or association or by an accrediting agency or association recognized by the [Commissioner of Education, Department of Health, Education, and Welfare] *Secretary of Education*.

§ 2132. Eligibility for educational assistance

(a) To be eligible for educational assistance under section 2131 *of this title*, a member must not be serving on active duty for more than thirty days and must—

(1) be an enlisted member of the Selected Reserve of the Ready Reserve of an armed force;

(2) have initially enlisted as a Reserve for service in a unit of the Selected Reserve of a reserve component after September 30, 1977;

(3) never have served in an armed force before such enlistment;

(4) at the time of such enlistment have executed an agreement as prescribed by subsection (b);

(5) be a graduate from secondary school;

(6) have completed the initial period of active duty for training required of such member;

(7) if the member is assigned to a unit, be participating satisfactorily in training with such unit; and

(8) have served less than eight years as a Reserve.

(b)(1) An agreement referred to in subsection (a)(4) shall be in writing and shall provide that if the member accepts educational assistance under section 2131 *of this title*, the period of enlistment of such member shall be not less than six years and if the member is discharged for the purpose of accepting an appointment as an officer, the member shall remain a member of the Ready Reserve until the last day of the term of such enlistment.

(2) A member who enlists after September 30, 1977, but before regulations to carry out this chapter are promulgated shall be eligible for educational assistance under section 2131 *of this title* if he is otherwise eligible for such assistance under subsection (a) and if he executes an agreement as described in paragraph (1) not later than one year after the date on which regulations to carry out this chapter are first promulgated.

(c) Educational assistance being provided a member under section 2131 *of this title* may be continued to a member who otherwise continues to qualify for such assistance if such member—

(1) is discharged in order to accept an immediate appointment as an officer in the Ready Reserve; or

(2) is no longer a member of the Selected Reserve, if such member is a member of the Ready Reserve and has served at least six years in the Selected Reserve of the Ready Reserve.

§ 2133. Termination of assistance; refund by member

(a) Educational assistance being provided a member under section 2131 *of this title* shall be terminated if—

(1) the member fails to participate satisfactorily in training with his unit, if he is a member of a unit;

(2) the member is separated from his armed force, unless he is separated in order to accept an immediate appointment as an officer in the Ready Reserve;

(3) the member completes eight years of service; or

(4) the member receives financial assistance under section 2107 *of this title* as a member of the Senior Reserve Officers' Training Corps.

* * * * * * *

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

*   *   *   *   *   *   *

CHAPTER 131—PLANNING AND COORDINATION

*   *   *   *   *   *   *

§ 2205. Availability of reimbursements

Reimbursements made to appropriations of the Department of Defense or a department or agency thereof under [section 686 of title 31] *the Act of March 4, 1915 (31 U.S.C. 686)*, or other amounts paid by or on behalf of a department or agency of the Department of Defense to another department or agency of the Department of Defense, or by or on behalf of personnel of any department or organization, for services rendered or supplies furnished, may be credited to authorized accounts. Funds so credited are available for obligation for the same period as the funds in the account so credited. Such an account shall be accounted for as one fund on the books of the Department of the Treasury.

*   *   *   *   *   *   *

§ 2210. Proceeds of sales of supplies: credited to appropriations

(a) Current applicable appropriations of the Department of Defense may be credited with proceeds of the disposals of supplies that are not financed by stock funds established under section 2208 of this title.

(b) Obligations may, without regard to fiscal year limitations, be incurred against anticipated reimbursements to stock funds in such amounts and for such period as the Secretary of Defense, with the approval of the [Director of the Bureau of the Budget] *President*, may determine to be necessary to maintain stock levels consistently with planned operations for the next fiscal year.

§ 2211. Reimbursement for equipment, material, or services furnished members of the United Nations

Amounts paid by members of the United Nations for equipment or materials furnished, or services performed, in joint military operations shall be credited to appropriate appropriations of the Department of Defense in the manner authorized by [section 2392(d) of title 22] *section 632(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2392(d))*.

*   *   *   *   *   *   *

CHAPTER 137—PROCUREMENT GENERALLY

Sec.
2301. Declaration of policy.
2302. Definitions.
2303. Applicability of chapter.
2304. Purchases and contracts: *formal* advertising; exceptions.

*   *   *   *   *   *   *

§ 2302. Definitions

In this chapter—

(1) "Head of an agency" means the Secretary, the Under Secretary, or any Assistant Secretary, of the Army, Navy, or Air Force; the Secretary of [the Treasury] *Transportation*; or the Administrator of the National Aeronautics and Space Administration.

* * * * * * *

§ 2304. Purchases and contracts: formal advertising; exceptions

(a) * * *

* * * * * * *

(f) For the purposes of the following laws, purchases or contracts negotiated under this section shall be treated as if they were made with formal advertising:

[(1) Sections 35–45 of title 41.

[(2) Sections 276a–276a-5 of title 40.]

(1) The Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes," approved June 30, 1936 (commonly referred to as the "Walsh-Healy Act") (41 U.S.C. 35-45).

(2) The Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes", approved March 3, 1931 (commonly referred to as the "Davis-Bacon Act") (40 U.S.C. 276a—276a-5).

[(3) Sections 324 and 325a of title 40.]

* * * * * * *

§ 2306. Kinds of contracts

(a) * * *

* * * * * * *

(f)*(1)* A prime contractor or any subcontractor shall be required to submit cost or pricing data under the circumstances listed below, and shall be required to certify that, to the best of his knowledge and belief, the cost of pricing data he submitted was accurate, complete and current—

[(1) Prior] *(A) prior* to the award of any negotiated prime contract under this title where the price is expected to exceed $100,000;

[(2) Prior] *(B) prior* to the pricing of any contract change or modification for which the price adjustment is expected to exceed $100,000, or such lesser amount as may be prescribed by the head of the agency;

[(3) Prior] *(C) prior* to the award of a subcontract at any tier, where the prime contractor and each higher tier subcontractor have been required to furnish such a certificate, if the price of such subcontract is expected to exceed $100,000; or

[(4) Prior] *(D) prior* to the pricing of any contract change or modification to a subcontract covered by [(3) above] *clause (C)* for which the price adjustment is expected to exceed $100,000, or such lesser amount as may be prescribed by the head of the agency.

(2) Any prime contract or change or modification thereto under which such certificate is required shall contain a provision that the price to the Government, including profit or fee, shall be adjusted to exclude any significant sums by which it may be determined by the head of the agency that such price was increased because the contractor or any subcontractor required to furnish such a certificate, furnished cost or pricing data which, as of a date agreed upon between the parties (which date shall be as close to the date of agreement on the negotiated price as is practicable), was inaccurate, incomplete, or noncurrent: *Provided,* That the requirements of this subsection need not be applied to contracts or subcontracts where the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, prices set by law or regulation or, in exceptional cases where the head of the agency determines that the requirements of this subsection may be waived and states in writing his reasons for such determination.

(3) For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this subsection, any authorized representative of the head of the agency who is an employee of the United States Government shall have the right, until the expiration of three years after final payment under the contract or subcontract, to examine all books, records, documents, and other data of the contractor or subcontractor related to the negotiation, pricing, or performance of the contract or subcontract.

(g)(1) The head of an agency may enter into contracts for periods of not more than five years for the following types of services (and items of supply related to such services) to be performed outside the forty-eight contiguous States and the District of Columbia for which funds would otherwise be available for obligation only within the fiscal year for which appropriated—

(A) operation, maintenance, and support of facilities and installations;

(B) maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(C) specialized training necessitating high quality instructor skills (for example, pilot and aircrew members; foreign language training); and

(D) base services (for example, ground maintenance; in-plane refueling; bus transportation; refuse collection and disposal);

whenever he finds [that:] *that—*

(i) there will be a continuing requirement for the services consonant with current plans for the proposed contract period;

(ii) the furnishing of such services will require a substantial initial investment in plant or equipment, or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(iii) the use of such a contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

(2) In entering into such contracts, the head of the agency shall be guided by the following principles:

(A) [the] *The* portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of such plant or equipment. Useful commercial life, for this purpose, means the commercial utility of the facilities rather than the physical life thereof, with due consideration given to such factors as location of facilities, specialized nature thereof, and obsolescence.

(B) [consideration] *Consideration* shall be given to the desirability of obtaining an option to renew the contract for a reasonable period not to exceed three years, at prices not to include charges for plant, equipment and other nonrecurring costs, already amortized.

(C) [consideration] *Consideration* shall be given to the desirability of reserving in the agency the right, upon payment of the unamortized portion of the cost of the plant or equipment, to take title thereto under appropriate circumstances.

(3) In the event funds are not made available for the continuation of such a contract into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid [from:] *from—*

(A) appropriations originally available for the performance of the contract concerned;

(B) appropriations currently available for procurement of the type of services concerned, and not otherwise obligated; or

(C) funds appropriated for those payments.

* * * * * * *

§2314. Laws inapplicable to agencies named in section 2303 of this title

Sections [5, 6, 6a, and 13 of title 41] *3709 and 3735 of the Revised Statutes (41 U.S.C. 5 and 13)* do not apply to the procurement of property or services by the agencies named in section 2303 of this title.

CHAPTER 141—MISCELLANEOUS PROCUREMENT PROVISIONS

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2381. Contracts: regulations for bids.
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2384. Supplies: marking with name of contractor.
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2388. Liquid fuels: contracts for storage, handling, and distribution.
2389. Contracts for the procurement of milk; price adjustment.
2390. Suggestions for improving procurement policies.

* * * * * * *

§ 2390. Suggestions for improving procurement policies

[(a)] The Secretary of Defense shall request each commissioned officer, and each civilian employee above grade GS–12, who is scheduled for retirement and who is, or was at any time within one year prior to such scheduled retirement, assigned to, or employed in, military procurement to submit suggestions for methods to improve procurement policies, including suggestions for improving competitive bidding procedures and for reducing or eliminating any inequities that may exist. Such request shall be made of each such commissioned officer or employee not less than 30 days preceding his release from active duty or his separation. Submission of suggestions shall be at the option of each such commissioned officer or employee, and each such officer or employee shall be allowed reasonable time during working hours to prepare such suggestions, if such officer or employee chooses to make suggestions under this section.

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CHAPTER 151—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES

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§ 2543. Equipment: Inaugural Committee

(a) The Secretary of Defense, under such conditions as he may prescribe, may lend, to an Inaugural Committee established under [721 of title 36] *the first* section *of the Presidential Inaugural Ceremonies Act (36 U.S.C. 721)*, hospital tents, smaller tents, camp appliances, hospital furniture, flags other than battle flags, flagpoles, litters, and ambulances and the services of their drivers, that can be spared without detriment to the public service.

* * * * * * *

CHAPTER 153—EXCHANGE OF MATERIAL AND DISPOSAL OF OBSOLETE, SURPLUS, OR UNCLAIMED PROPERTY

Sec.
2571. Interchange of property and services.
2572. Condemned or obsolete material: loan or gift to certain organizations.
[2573. Excess property: transfers to Canal Zone Government.]
2574. Armament: sale of individual pieces.
2575. Disposition of unclaimed property.
2576. Surplus military equipment: sale to State and local law enforcement and firefighting agencies.

* * * * * * *

§ 2572. Condemned or obsolete material: loan or gift to certain organizations

Subject to regulations under [section 486 of title 40] *section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)*, the Secretary of a military department, or the Secretary of [the Treasury] *Transportation* under regulations to be prescribed by him, may lend or give, without expense to the United States, books, manuscripts, works of art, drawings, plans, models, and condemned or obsolete combat material that are not needed by that department to—

(1) a municipal corporation;

(2) a soldiers' monument association;

(3) a State museum;

(4) an incorporated museum, operated and maintained for educational purposes only, whose charter denies it the right to operate for profit;

(5) a post of the Veterans of Foreign Wars of the United States;

(6) a post of the American Legion;

(7) a local unit of any other recognized war veterans' association; or

(8) a post of the Sons of Veterans Reserve.

* * * * * * *

[§ 2573. Excess property: transfers to Canal Zone Government

[A military department may transfer to the Canal Zone Government, without reimbursement and regardless of location, any supplies, including tools, structures, vessels, and floating equipment, that are excess property as defined by section 472(e) of title 40 and have been certified by the Governor of the Canal Zone as necessary for the care, maintenance, operation, improvement, sanitation, or government of the Canal Zone.]

* * * * * * *

§ 2575. Disposition of unclaimed property

(a) The Secretary of any military department, and the Secretary of [the Treasury] *Transportation* under such regulations as they may respectively prescribe, may each by public or private sale or otherwise, dispose of all lost, abandoned, or unclaimed personal property that comes into the custody or control of his department, other than property subject to section 4712, 4713, 6522, 9712, or 9713 of this title or subject to subsection (c) of this section. However, property may not be disposed of until diligent effort has been made to find the owner, his heirs or next of kin, or his legal representative. If the owner, his heirs or next of kin, or his legal representative is determined but not found, the property may not be disposed of until the expiration of 120 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at his last known address. When diligent effort to determine the owner, his heirs or next of kin, or his legal representatives is unsuccessful, the property may be disposed of without delay, except that if it has a fair market value of $25 or more the property may not be disposed of until three months after the date it is received at a storage point designated by the Secretary.

* * * * * * *

(c) No property covered by this section may be delivered to the *United States* Soldiers' *and Airmen's* Home by the Secretary of the Army or the Secretary of the Air Force, except papers of value, sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes. The Home shall deliver the property to the owner, his heirs or next of kin, or his legal representative, if he establishes a right to it within two years after its receipt by the Home.

§ 2576. Surplus military equipment: sale to State and local law enforcement and firefighting agencies

(a) The Secretary of Defense, under regulations prescribed by him, may sell to State and local law enforcement and firefighting agencies, at fair market value, pistols, revolvers, shotguns, rifles of a caliber not exceeding .30, ammunition for such firearms, gas masks, and protective body armor which (1) are suitable for use by such agencies in carrying out law enforcement and firefighting activities, and (2) have been determined to be surplus property [pursuant to] *under* the Federal Property and Administrative Services Act of 1949 [(63 Stat. 377), as amended] *(40 U.S.C. 471 et seq.)*.

* * * * * * *

CHAPTER 155—ACCEPTANCE OF GIFTS AND SERVICES

* * * * * * *

§ 2601. General gift funds

(a) * * *

(b) Gifts and bequests of money, and the proceeds of the sale of property, received under subsection (a) shall be deposited in the Treasury in the fund called—

(1) "Department of the Army General Gift Fund", in the case of deposits of that department;

(2) "Department of the Navy General Gift Fund", in the case of deposits of that department;

(3) "Department of the Air Force General Gift Fund", in the case of deposits of that department; and

(4) "Coast Guard General Gift Fund", in the case of deposits of the Secretary of [the Treasury] *Transportation*.

The Secretary concerned may disburse funds deposited under this subsection for the benefit or use of the designated institution or organization, subject to the terms of the gift, devise, or bequest.

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CHAPTER 157—TRANSPORTATION

* * * * * * *

§ 2633. Stevedoring and terminal services: vessels carrying cargo or passengers sponsored by military department

(a) Notwithstanding section [628 of title 31] *3678 of the Revised Statutes (31 U.S.C. 628)*, the Secretary of a military department may, under such regulations as he may prescribe, furnish stevedoring and terminal services and facilities to vessels carrying cargo, or passengers, or both, sponsored by his department.

(b) The furnishing of services and facilities under this section shall be at fair and reasonable rates.

(c) The proceeds from furnishing services and facilities under this section shall be paid to the credit of the appropriation or fund out of which the services or facilities were supplied.

* * * * * * *

§ 2635. Medical emergency helicopter transportation assistance and limitation of individual liability

(a) The Secretary of Defense is authorized to assist the Department of Health[, Education, and Welfare] *and Human Services* and the Department of Transportation in providing medical emergency helicopter transportation services to civilians. Any resources provided under this section shall be under such terms and conditions, including reimbursement, as the Secretary of Defense deems appropriate and shall be subject to the following specific limitations:

(1) Assistance may be provided only in areas where military units able to provide such assistance are regularly assigned, and military units shall not be transferred from one area to another for the purpose of providing such assistance.

(2) Assistance may be provided only to the extent that it does not interfere with the performance of the military mission.

(3) The provision of assistance shall not cause any increase in funds required for the operation of the Department of Defense.

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CHAPTER 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NON-EXCESS PROPERTY

Sec.

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[2680. Reimbursement of owners of property acquired for public works projects for moving expenses.]

* * * * * * *

§ 2664. Acquisition of property for lumber production

(a) The Secretary of a military department, the Secretary of Commerce, and the Chairman of [the Federal Maritime Board] *Federal Maritime Commission*, or any one or more of them, may have proceedings brought in the name of the United States to acquire by condemnation any interest in property named in subsection (b), including temporary use, and needed for—

(1) the production of aircraft, vessels, dry docks, or equipment for them;

(2) the procurement of supplies for aircraft, vessels, and dry docks; or

(3) housing for persons employed by the United States in connection with functions of the Army, Navy, Air Force, or Marine Corps, or the functions transferred to the Secretary of Commerce or [the Federal Maritime Board] *Federal Maritime Commission* [by 1950 Reorganization Plan No. 21, effective May 24, 1950 (64 Stat. 1273)] *under Reorganization Plan No. 7*

of 1961, effective August 12, 1961 (75 Stat. 840), as the case may be.

* * * * * * *

§ 2665. Sale of certain interests in land; logs

(a) The President, through an executive department or the [Federal Maritime Board] *Federal Maritime Commission*, may sell to any person or foreign government any interest in land that is acquired under section 2664 of this title for the production of lumber or timber products, except land under the control of the Department of the Army or the Department of the Air Force.

(b) The President, through an executive department or the [Federal Maritime Board] *Federal Maritime Commission*, may sell to any person or foreign government any logs wholly or partly manufactured by, or otherwise procured for, the Army, Navy, Air Force, or Federal Maritime Board.

* * * * * * *

§ 2667. Leases: non-excess property

(a) Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is—

(1) under the control of that department;

(2) not for the time needed for public use; and

(3) not excess property, as defined by section [472 of title 40] *3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)*.

(b) A lease under subsection (a)—

(1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

(3) must permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest; and

(4) may provide, notwithstanding section [303b of title 40] *321 of the Act entitled "An Act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes", approved June 30, 1932 (40 U.S.C. 303b)*, or any other provision of law, for the maintenance, protection, repair, or restoration, by the lessee, of the property leased, or of the entire unit or installation where a substantial part of it is leased, as part or all of the consideration for the lease.

* * * * * * *

(c) The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an [act] *Act* of Congress, the lease shall be renegotiated.

(f) Notwithstanding clause (3) of subsection (a), real property and associated personal property, which have been determined excess as the result of a defense installation realignment or closure, may be leased to State or local governments pending final disposition of such property if—

(1) [The] *the* Secretary concerned determines that such action would facilitate State or local economic adjustment efforts, and

(2) [The Administrator of the General Services Administration] *the Administrator of General Services* concurs in the action.

* * * * * * *

§2681. Construction or acquisition of family housing and community facilities in foreign countries

(a) In addition to family housing and to community facilities that otherwise may be constructed or acquired by the Department of Defense, the Secretary of Defense may, with the approval of the [Director of the Bureau of the Budget] *President*, construct, or acquire by lease or otherwise, family housing to be occupied as public quarters, and community facilities, in foreign countries by using foreign currencies that have a value of not more than $250,000,000 and that were acquired under sections 1691-1724 of title 7 or through other commodity transactions of the Commodity Credit Corporation.

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CHAPTER 163—MILITARY CLAIMS

* * * * * * *

§2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force

(a) * * *

* * * * * * *

(f) For the purposes of this section, a member of the [Environmental Science Services] *National Oceanic and Atmospheric* Administration or of the Public Health Service who is serving with the Navy or Marine Corps shall be treated as if he were a member of the armed force.

* * * * * * *

§2734. Property loss; personal injury or death: incident to noncombat activities of the armed forces; foreign countries

(a) * * *

* * * * * * *

(g) Payment of claims against the Coast Guard arising while it is operating as a service in the Department of [the Treasury] *Trans-*

portation shall be made out of the appropriation for the operating expenses of the Coast Guard.

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CHAPTER 165—ACCOUNTABILITY AND RESPONSIBILITY

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2771 Final settlement of accounts: deceased members.
[2772. Withholding pay of officers.]
2773. Accountability for public money: disbursing officers; agent officers.
2774 Claims for overpayment of pay and allowances, other than travel and transportation allowances.

§ 2771. Final settlement of accounts: deceased members

(a) * * *

(b) Designations and changes of designation of beneficiaries under subsection (a)(1) are subject to regulations to be prescribed by the Secretary concerned. So far as practicable, these regulations shall be uniform for the armed forces, the [Environmental Science Services] *National Oceanic and Atmospheric* Administration, and the Public Health Service.

(c) Under such regulations as the Comptroller General may prescribe, payments under subsection (a) shall be made by the military department concerned or the Department of [the Treasury] *Transportation*, as the case may be. Payment under clause (6) of subsection (a) shall be made—

(1) upon settlement by the General Accounting Office; or

(2) as otherwise authorized by the Comptroller General.

* * * * * * *

§ 2774. Claims for overpayment of pay and allowances, other than travel and transportation allowances

(a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances, other than travel and transportation allowances, made before or after [the effective date of this section] *October 2, 1972*, to or on behalf of a member or former member of the uniformed services, as defined in section 101(3) of title 37, the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by—

(1) the Comptroller General; or

(2) the Secretary concerned, as defined in section 101(5) of title 37, when—

(A) the claim is in an amount aggregating not more than $500;

(B) the claim is not the subject of an exception made by the Comptroller General in the account of any accountable officer or official; and

(C) the waiver is made in accordance with standards which the Comptroller General shall prescribe.

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* * * * * * *

§ 3034. Chief of Staff: appointment; duties

(a) * * *

(b) The Chief of Staff, while so serving, has the grade of general without vacating his regular or reserve grade[, and is counted as one of the officers authorized to serve in a grade above lieutenant general under section 3066 of this title].

* * * * * * *

CHAPTER 307—THE ARMY

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* * * * * * *

§ 3064. Special branches

(a) The special branches of the Army consist of commissioned officers of the Regular Army appointed therein, other members of the Army assigned thereto by the Secretary of the Army, and the sections prescribed in this chapter. The special branches are—

(1) each corps of the Army Medical Department;
(2) the Judge Advocate General's Corps; [and]
(3) the Chaplains[.]; *and*

(4) such other special branches as may be established by the Secretary of the Army under subsection (b).

(b) The Secretary of the Army may establish special branches for the Army and may appoint commissioned officers in, and may assign members to, such branches.

[(b)**]** *(c)* The Secretary may not assign any officer of the Regular Army to a special branch.

* * * * * * *

[§ **3066. Generals and lieutenant generals.**

[(a) The President may designate positions of importance and responsibility to carry the grade of general or lieutenant general. He may assign to those positions officers of the Army on active duty in any grade above brigadier general. While he holds one of those positions an officer has the grade specified for the position if appointed thereto by and with the advice and consent of the Senate.

[(b) The number of positions designated under subsection (a) may not be more than 15 percent of the number of general officers on active duty. Not more than 25 percent of those positions may be designated as positions to be held by officers in the grade of general.

[(c) General officers on the active list of the Regular Army who are specifically authorized by law to hold any civil office under the United States, or any instrumentality thereof, are in addition to the numbers authorized by this section.

[(d) Appointment to the grade of general or lieutenant general under subsection (a) does not vacate the regular or reserve grade held by the officer. When his appointment under that subsection terminates, he is entitled to resume any other grade that he may then be entitled to hold.**]**

* * * * * * *

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CHAPTER 331—STRENGTH

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[§ 3201. Army: members on active duty

[(a) The authorized strength of the Army in members on active duty, exclusive of—

[(1) officer candidates;
[(2) Reserves on active duty for training;
[(3) members paid from appropriations for the Army National Guard or the Army Reserve;
[(4) Reserves ordered to active duty in an emergency; and
[(5) enlisted members in a reserve officers' training corps or serving as cadets at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as midshipmen at the United States Naval Academy or in the Naval Reserve;

is 837,000.

[(b) The authorized daily average strength of the Army in members on active duty during the fiscal year, exclusive of—

[(1) officer candidates;
[(2) Reserves on active duty for training purposes only;
[(3) members employed in the Selective Service System; and
[(4) enlisted members in a reserve officers' training corps or serving as cadets at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as midshipmen at the United States Naval Academy or in the Naval Reserve;

is 837,000.]

§ 3202. Army: [officers in certain commissioned grades] *strength in grade; general officers*

[(a) The authorized strength of the Army in officers on active duty in each of the following grades on the last day of each fiscal year, exclusive of officers on active duty for training only and officers serving with other departments or agencies on a reimbursable basis, is, except as provided in subsections (e) and (f), based on the total number of those officers authorized by the Secretary of the Army in all commissioned grades, as follows:

If the total number authorized is—	The authorized strength in grade is—			
	For general officers	For colonels	For lieutenant colonels	For majors
50,000	350	3,352	6,940	9,350
60,000	400	3,752	8,045	10,950
70,000	425	4,102	9,150	12,500
80,000	450	4,452	10,205	14,050
90,000	475	4,752	11,260	15,600
100,000	495	5,002	12,265	17,060
110,000	510	5,202	13,270	18,370
120,000	520	5,402	14,175	19,680
130,000	530	5,602	15,075	20,890
140,000	540	5,802	15,875	22,095
150,000	550	6,002	16,675	23,300

[If the total number authorized by the Secretary is determined to be between two of the figures named in the first column of the table, the corresponding authorized strengths in grade are determined by mathematical interpolation between the respective authorized strengths named in the table. If it is determined to be more than 150,000, the Secretary shall fix the corresponding authorized strengths in grade in general conformity with the table.]

(a) The authorized strength of the Army in general officers on active duty on the last day of each fiscal year, exclusive of officers on active duty for training only and officers serving with other departments or agencies on a reimbursable basis, is based on the total number of officers authorized for the Army in all commissioned grades under section 521 of this title as follows:

If the total number of officers authorized in all commissioned grades is—	*The authorized strength for general officers is—*
50,000	*350*
60,000	*400*
70,000	*425*
80,000	*450*
90,000	*475*
100,000	*495*
110,000	*510*
120,000	*520*
130,000	*530*
140,000	*540*
150,000	*550.*

If the total number of officers authorized in all commissioned grades is between two of the figures listed in the first column of the table, the authorized strength for general officers is determined by *mathematical interpolation between the respective authorized strengths listed in the table. If such number is more than 150,000, the Secretary of the Army shall fix the corresponding authorized strength in general officers in general conformity with the table.*

[(b) Not more than one-half of the general officer strength may be in grades above brigadier general.

[(c) A vacancy in any grade may be filled by an authorized appointment in any lower grade.

[(d) In time of war, or of national emergency declared after May 5, 1954, by Congress or the President, the President may suspend the operation of any provision of this section.]

(b) Whenever the number of general officers is less than the number authorized under this section, the difference between the two numbers may be applied to increase the number authorized under section 523 of this title for any lower grade to which such section is applicable.

(c) In time of war, or of national emergency declared by Congress or the President after November 30, 1980, the President may suspend the operation of any provision of this section. So long as such war or national emergency continues, any such suspension may be extended by the President. Any such suspension shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on the date of the termination of the war or national emergency, whichever occurs first. With respect to the end of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621–1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of the termination of the emergency.

[(e) The authorized strengths of the Army in officers in the Medical Corps and Dental Corps in grades below brigadier general shall be based on the needs of the Army, as determined by the Secretary under regulations to be prescribed by the Secretary of Defense.

[(f) In determining the authorized strength of the Army under subsection (a), the strengths authorized for the Medical Corps and Dental Corps shall be excluded.]

[§ 3203. Regular Army: members on active duty

[The authorized strength of the Regular Army in members on active duty, exclusive of officer candidates, is 837,000 less the number of members of the Army on active duty who are neither members of the Regular Army nor members of the Army in the categories listed in section 3201(a)(1)–(5) of this title.

[§ 3204. Regular Army: commissioned officers on active list

[The authorized strength of the Regular Army in commissioned officers on the active list is the sum of—

[(1) the numbers authorized by sections 3205, 3206, and 3207 of this title;

[(2) the number of permanent professors of the United States Military Academy authorized by section 4331 of this title and the director of admissions thereof; and

[(3) the numbers in designated categories specifically authorized by law as additional numbers.

[§ 3205. Regular Army: commissioned officers on active list, exclusive of certain categories

[(a) The authorized strength of the Regular Army in commissioned officers on the active list, exclusive of—

[(1) members of the Army Nurse Corps;

[(2) members of the Army Medical Specialist Corps;

[(3) permanent professors and the director of admissions of the United States Military Academy; and

[(4) members in designated categories specifically authorized by law as additional numbers;

is 49,500.

[(b) Subject to subsection (a), the Secretary of Defense, with the approval of the President, shall estimate each year, for each of the five years following that year, the strength of the Regular Army in commissioned officers on the active list exclusive of officers in the categories listed in subsection (a)(1)–(4).

[§ 3206. Regular Army: commissioned officers on active list; Army Nurse Corps

[The authorized strength of the Army Nurse Corps in commissioned officers on the active list of the Regular Army is such numbers as may be prescribed by the Secretary.

[§ 3207. Regular Army: commissioned officers on active list; Army Medical Specialist Corps

[The authorized strength of the Army Medical Specialist Corps in commissioned officers on the active list of the Regular Army is such numbers as may be prescribed by the Secretary.

[§ 3209. Regular Army: commissioned officers on active list; other branches

[Except for the Army Nurse Corps and the Army Medical Specialist Corps, the authorized strength of each branch in commissioned officers on the active list of the Regular Army is that prescribed by the Secretary of the Army. However, the strength so prescribed—

[(1) for the Judge Advocate General's Corps, may not be less than 15/1,000 of the authorized strength of the Regular Army in commissioned officers on the active list; and

[(2) for the Corps of Engineers, may not be less than 788.

[(b) The authorized strength of the Women's Army Corps in commissioned officers on the active list of the Regular Army is that prescribed by the Secretary.]

§ 3210. Regular Army: strength in grade; general officers

(a) Subject to section 3202(a) of this title, the authorized strength of the Regular Army in general officers on the [active list] *active-duty list,* exclusive of the number authorized for the Army Medical Department and the Chaplains, is 75/10,000 of the authorized strength of the Regular Army in commissioned officers on the [active list] *active-duty list,* exclusive of the number of commissioned officers on the [active list] *active-duty list* authorized for the Army Medical Department and the Chaplains. [Of this authorized strength, not more than one-half may be in a regular grade above brigadier general.]

(b) The authorized strength of each of the following branches—

[(1) the Medical Corps;

[(2) the Dental Corps;

[(3) the Veterinary Corps; and]

(1) each corps of the Army Medical Department; and

[(4)]*(2)* the Chaplains;

in general officers on the [active list] *active-duty list* of the Regular Army is 5/1,000 of the authorized strength of the branch concerned in commissioned officers on the [active list] *active-duty list* of the Regular Army. Not more than one-half of the authorized strength in general officers in such a branch may be in a regular grade above brigadier general.

(c) When the application of the percentages and ratios specified in this section results in a fraction, a fraction of one-half or more is counted as one, and a fraction of less than one-half is disregarded.

[(d) General officers on the active list of the Regular Army who are specifically authorized by law to hold any civil office under the United States, or any instrumentality thereof, are not counted in determining authorized strength under this section.

[(e) The authorized strength of the Medical Service Corps in general officers on the active list of the Regular Army is one commissioned officer in the regular grade of brigadier general.]

[§ 3211. Regular Army: strength in grade; promotion-list officers

[(a) Subject to subsection (b), the authorized strength of the Regular Army in officers in each regular grade on each of the promotion lists set forth in section 3296 of this title shall be as prescribed by the Secretary of the Army. A vacancy in any grade on a promotion list may be filled by an authorized appointment in any lower grade.

[(b) Each strength prescribed by the Secretary under subsection (a) shall be stated as a percentage of the strength authorized for the particular list, and the schedule of percentages may be different for each list. No schedule for a list may authorize, with respect to a grade, a percentage that is higher than the sum of (1) the figure fixed for the grade according to the following table, and (2) the amounts, if any, by which the percentage fixed by the Secretary for higher grades are less than the figures fixed according to that table:

[[In percent]

[Grade	Column 1	Column 2
	Medical Corps, Dental Corps, Veterinary Corps, Chaplains, Judge Advocate General's Corps	All other promotion lists
Colonel	[1]8	[1]8
Lieutenant colonel	14	14
Major	19	19

[[In percent]—Continued

[Grade	Column 1	Column 2
	Medical Corps, Dental Corps, Veterinary Corps, Chaplains, Judge Advocate General's Corps	All other promotion lists
Captain	23	23
First lieutenant	36	18
Second lieutenant	(2)—	18

[[1] Colonels whose retirement is deferred under section 3921(b) of this title are not included within this percentage.

[[2] None may be authorized by the Secretary for this category.]

§ 3212. [Regular Army;] Army Reserve; Army National Guard of United States: strength in grade; temporary increases

The authorized strength in any [regular or] reserve grade, as prescribed [by or] under this chapter, is automatically increased to the minimum extent necessary to give effect to each appointment made in that grade under section [541,] 1211(a), 3036, [3298, 3299,] 3365(a), *or* 3366[, or 4353] of this title. An authorized strength so increased is increased for no other purpose, and while he holds that grade the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under those sections, may be made in that grade.

[§ 3213. Regular Army: warrant officers on active list

[The authorized strength of the Regular Army in warrant officers on the active list is 9,000.

[§ 3214. Regular Army: enlisted members on active duty

[The authorized strength of the Regular Army in enlisted members on active duty, exclusive of officer candidates, is 837,000 less the number of members of the Army on active duty who are neither enlisted members of the Regular Army nor members of the Army in the categories listed in section 3201(a)(1)-(5) of this title.]

* * * * * * *

[§ 3216. Corps of Engineers: enlisted members on active duty

[The authorized strength of the Corps of Engineers in enlisted members on active duty is as prescribed by the Secretary of the Army. However, it may not be less than 12,000.]

* * * * * * *

§ 3222. Army Reserve, exclusive of members on active duty

The authorized strength of the Army Reserve, exclusive of members who are included in the strength [of 837,000] authorized [in section 3201(a) of this title] for members of the Army on active duty, is 980,000.

* * * * * * *

§ 3225. Army National Guard and Army National Guard of United States, exclusive of members on active duty

The authorized strength of the Army National Guard and the Army National Guard of the United States, exclusive of members who are included in the strength [of 837,000] authorized [in section 3201(a) of this title] for members of the Army on active duty, is 600,000. The strength authorized by this section shall be allocated among the States and Territories, Puerto Rico, the Canal Zone, and the District of Columbia.

[§ 3230. Personnel detailed outside Department of Defense

[Members of the Army who are detailed for duty with agencies of the United States outside the Department of Defense on a reimbursable basis are not counted in computing strengths under any law.]

CHAPTER 333—ENLISTMENTS

* * * * * * *

§ 3253. Army: persons not qualified

In time of peace, no person may be accepted for original enlistment in the Army unless he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the applicable provisions of [chapter 12 of title 8.] *the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).*

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CHAPTER 335—APPOINTMENTS IN THE REGULAR ARMY

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[§ 3284. Commissioned officers: appointment, how made

[Appointments in commissioned grades in the Regular Army shall be made by the President, by and with the advice and consent of the Senate.

[§ 3285. Commissioned officers: original appointment; qualifications

[To be eligible for original appointment in a commissioned grade in the Regular Army, except in the Medical Corps or the Dental Corps, and except as provided in section 4353 (b) of this title, a person must—

[(1) be a citizen of the United States;

[(2) be at least 21 years of age;

[(3) be of good moral character;

[(4) be physically qualified for active service; and

[(5) have such other qualifications as the Secretary of the Army may prescribe.

[§ 3286. Commissioned officers: original appointment; age limitations

[(a) a person may not be originally appointed in a commissioned grade in the Regular Army, except in the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialists Corps, if on the date of his appointment he has already passed his—

[(1) thirty-fourth birthday, for a person appointed as a chaplain;

[(2) thirty-second birthday, for a person appointed in the Judge Advocate General's Corps or the Veterinary Corps;

[(3) thirtieth birthday, for a person appointed in the Medical Service Corps; or

[(4) twenty-seventh birthday, for all other persons.

However, each maximum age is increased by the period credited to the appointee under section 3287(a) of this title, other than that credited under clause (2) (A) or (B) of that section.

[(b) Notwithstanding subsection (a), a person may not be originally appointed in a commissioned grade in the Regular Army, except in the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps, if he is above the age that would permit him to complete 20 years of active commissioned service in the armed forces before his fifty-fifth birthday.

[§3287. Commissioned officers: original appointment; service credit

[(a) For the purpose of determining grade, position on a promotion list, seniority in his grade in the Regular Army, and eligibility for promotion, a person originally appointed in a commissioned grade in the Regular Army, except in the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps, may, in the discretion of the Secretary of the Army, be credited at the time of his appointment—

[(1) with the active commissioned service in the Army that he performed after December 6, 1941, after becoming 21 years of age, and before his appointment; and

[(2) with one of the following periods, if applicable;

[(A) Three years, if he is appointed as a chaplain, in the Judge Advocate General's Corps, or in the Veterinary Corps.

[(B) Three years, if he is appointed in the Medical Service Corps and if he holds the degree of doctor of philosophy or a comparable degree recognized by the Surgeon General in a science allied to medicine.

[(C) If he was a commissioned officer on active duty on July 20, 1956, a period of not more than 8 years, computed by—

[(i) taking the period of commissioned service that may be credited to him in computing his basic pay, but not more than the period computed by subtracting 27 years from his age on the date of his appointment; and

[(ii) subtracting the period of active commissioned service in the Army that he performed after December 6, 1941, after becoming 21 years of age, and before his appointment, but not more than the difference in age computed under subparagraph (1).

[(D) The number of days, months, and years by which the appointee's age exceeds 27 years, but not more than two years.

[(b) Notwithstanding any other provision of law, a person who was a cadet at the United States Military Academy or the United States Air Force Academy, or a midshipman at the United States Naval Academy, may not be originally appointed in a commissioned grade in the Regular Army before his classmates at that academy are graduated and appointed as officers. A person who was a cadet or midshipman at, but was not graduated from, one of those academies may not be credited, upon original appointment as a commissioned officer of the Regular Army, with longer service than that credited to any member of his class at that academy whose service in the Army has been continuous since graduation.

[(c) A graduate of the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy who is originally appointed as a second lieutenant in the Regular Army is not entitled to any service credit under this section.

[§ 3288. Commissioned officers; original appointment; determination of grade

[A person originally appointed as a commissioned officer in the Regular Army, except in the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps, is appointed in the grade that is held by the junior officer on the applicable promotion list who is not a deferred officer, or an officer considered but not recommended for promotion under section 518 of the Officer Personnel Act of 1947 (61 Stat. 910), and who has the same or the next longer service.

[§ 3289. Commissioned officers; Medical Corps; original appointment; professional examination

[No person may be originally appointed as a first lieutenant in the Regular Army in the Medical Corps until he passes an examination of his professional fitness before an examining board composed of at least three officers of the Medical Corps designated by the Secretary of the Army.

[§ 3290. Commissioned officers; Medical Service Corps; original appointment; additional qualifications, grade

[An original appointment in the Regular Army in the Medical Service Corps may be made only in the grade of second lieutenant, except as provided in section 3287(c) of this title, and from the following persons:

[(1) Members of the Regular Army.

[(2) Reserves not in an inactive status.

[(3) Graduates of an accredited school of pharmacy or optometry, or of a school or college who hold a degree in a science allied to medicine or any other degree approved by the Surgeon General.

[§ 3291. Commissioned officers: Army Nurse Corps and Army Medical Specialist Corps: original appointment; additional qualifications, grade

[(a) An original appointment in the Regular Army in the Army Nurse Corps or the Army Medical Specialist Corps may be made in the grade of—

[(1) second lieutenant, from persons who have performed less than three years of service creditable for promotion under subsection (c), who on the date of nomination have not passed their twenty-seventh birthday, and who are not qualified for appointment in the grade of first lieutenant under clause (2);

[(2) first lieutenant, from persons who have performed less than seven years of service creditable for promotion under subsection (c), and who on the date of nomination have not passed their thirtieth birthday; and

[(3) captain, from persons who have performed at least seven years of service creditable for promotion under subsection (c), and who on the date of nomination have not passed their thirty-ninth birthday.

The maximum ages specified in clauses (1) and (2) of this subsection are increased by the period of active commissioned service in the armed forces after December 7, 1941, but not by more than five years.

[(b) To be eligible for appointment in the Army Nurse Corps under this section, a person must be a graduate of a hospital or university school of nursing and a registered nurse.

[(c) For the purpose of determining years of service creditable for promotion, a person appointed under subsection (a) shall be credited at the time of appointment with all active commissioned service in the armed forces performed after becoming 21 years of age and before appointment. However, not more than fourteen years of service may be so credited. A person appointed as a commissioned officer under subsection (a)(2) who has not performed at least three years of active commissioned service in the armed forces after December 7, 1941, shall, for the same purposes, be credited with that amount of service.

[§ 3292. Commissioned officers; Judge Advocate General's Corps: original appointment; additional qualifications, grade

[Original appointments in commissioned grades in the Regular Army in the Judge Advocate General's Corps may be made from the following:

[(1) Officers of the Regular Army in other branches.

[(2) Reserve commissioned officers assigned to the Judge Advocate General's Corps.

[(3) Qualified civilian graduates of accredited law schools.

Commissioned officers of the Regular Army in other branches may be originally appointed in the Judge Advocate General's Corps in the grades of first lieutenant through colonel.

[§ 3293. Commissioned officers; Chaplains: original appointment; examination

[No person in civil life may be originally appointed as a chaplain in the Regular Army unless he has passed an examination prescribed by the President as to his moral, mental, and physical qualifications.

[§ 3294. Commissioned officers; Medical and Dental Corps: original appointment

[(a) Original appointments in the Regular Army may be made in the grades of first lieutenant through colonel in the Medical Corps or Dental Corps, as the needs of the Army require. These appointments may be made only from qualified doctors of medicine, osteopathy, or dentistry, as the case may be, who are citizens of the United States and who have such other qualifications as the Secretary of the Army may prescribe. In addition, to be eligible for appointment in the Medical Corps under this section, a doctor of osteopathy must—

[(1) be a graduate of a college of osteopathy whose graduates are eligible to be licensed to practice medicine or surgery in a majority of the States;

[(2) be licensed to practice medicine, surgery, or osteopathy in a State or Territory or in the District of Columbia;

[(3) under regulations to be prescribed by the Secretary of Defense, have completed a number of years of osteopathic and preosteopathic education equal to the number of years of medical and premedical education prescribed for persons entering recognized schools of medicine who become doctors of medicine and who would be qualified for appointment under this section in the grade for which that person is applying; and

[(4) have such other qualifications as the Secretary of the Army prescribes after considering the recommendation, if any, of the Surgeon General.

[(b) For the purposes of determining grade, position on a promotion list, seniority in his grade in the Regular Army, and eligibility for promotion, an officer appointed under subsection (a) shall be credited with the amount of service prescribed by the Secretary, but not less than four years. However, a doctor of medicine or osteopathy who has completed an internship of one year, or the equivalent, may not be credited with less than five years.

[§ 3295. Commissioned officers: original appointment; determination of place on promotion list

[The name of each person who is originally appointed in a commissioned grade in the Regular Army and whose name is to be carried on a promotion list, other than a person appointed in the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps, shall be placed on the applicable promotion list immediately below the junior officer of the same grade on that list who is not a deferred officer, or an officer considered but not recommended for promotion under section 518 of the Officer Personnel Act of 1947 (61 Stat. 910), and who has the same or the next longer service.

[§ 3296. Promotion lists: promotion-list officer defined; determination of place upon transfer or promotion

[(a) The names of all commissioned officers in grades below brigadier general on the active list of the Regular Army, except those in special categories otherwise excluded under law, and professors and the director of admissions of the United States Military Academy, shall be carried on promotion lists in descending order of grade and rank in the Regular Army. These officers may be called "promotion-list officers".

[(b) A separate promotion list shall be maintained for commissioned officers of the Regular Army in each of the following:

[(1) The Chaplains.

[(2) Each of the several branches of the Army Medical Department.

[(c) The names of all promotion-list officers not on a list maintained under subsection (b) shall be carried on the Army promotion list.

[(d) If a promotion-list officer is transferred from one branch to another whose officers are carried on a different promotion list, his name shall be placed upon the promotion list to which he is transferred among the officers of his grade in accordance with seniority as determined under section 3574(b) of this title.

[(e) Unless specifically provided otherwise, upon the promotion of a promotion-list officer, his name shall be placed at the foot of the list of officers of his grade.

[§ 3297. Selection boards

[(a) Under such regulations as he may prescribe, the Secretary of the Army shall detail selection boards, to meet at times prescribed by him, to recommend promotion-list officers and brigadier generals of the Regular Army for promotion in the Regular Army. Each board shall be composed of at least five officers of the Regular Army who hold a regular or temporary grade above lieutenant colonel, and who are senior in regular grade to, and who outrank, any officer considered by that board. However, a selection board considering promotion-list officers of the Army Nurse Corps or the Army Medical Specialist Corps may include promotion-list officers who are in the same corps as the officers being considered by that board and whose regular or temporary grades are above major.

[(b) No selection board may serve longer than one year and no member may serve on two consecutive boards for promotions to the same grade, if the second board considers any officer considered but not recommended for promotion by the first.

[(c) Each member of a selection board must swear that he will perform his duties without prejudice or partiality, having in view the special fitness of officers and the efficiency of the Army.

[(d) Except as otherwise provided by law, promotion-list officers and brigadier generals of the Regular Army may be promoted to the regular grades of captain through major general only when recommended by a selection board. A recommendation for promotion must be made by the majority of the total membership of the board. Notwithstanding any other provision of law, a board that is to recommend officers for promotion whom it considers to be the best qualified may recommend only those officers whom it also considers to be fully qualified.

[(e) Not later than 10 days after a board first meets, any officer eligible for consideration by that board is entitled to send a letter, through official channels, calling attention to matters of record in the Department of the Army concerning himself that he considers important. The letter may not contain any reflection upon the character, conduct, or motives of any officer, or criticism of any officer.

[§ 3298. Commissioned officers: promotion to first lieutenant; effect of failure of promotion

[(a) A promotion-list officer in the grade of second lieutenant shall be promoted to the regular grade of first lieutenant upon completing three years of service with which he is entitled to be credited for promotion. If a promotion-list officer in that grade is found to be not fully qualified, he shall be discharged under section 3814 of this title.

[(b) Vacancies in the grade of first lieutenant on a promotion list may be filled by promoting second lieutenants on that list with less than three years of service, in order of seniority, under regulations prescribed by the Secretary of the Army.

[§ 3299. Commissioned officers: promotion to captain, major or lieutenant colonel

[(a) Promotion-list officers shall be promoted to the regular grades of captain, major, and lieutenant colonel, under subsections (b) and (c), or eliminated from the active list under section 3303 of this title.

[(b) Without regard to vacancies, each promotion-list officer whose regular grade is first lieutenant, captain, or major shall be considered by a selection board for promotion to the next higher regular grade, far enough in advance of the date on which he will complete 7, 14, or 21 years of service with which he is entitled to be credited for promotion, as the case may be, that, if recommended, he may be promoted on the date on which he will complete that service.

[(c) Having in view the number of actual and anticipated vacancies on a promotion list in the regular grade of captain, major, or lieutenant colonel, the Secretary of the Army may direct a selection board to consider and recommend officers on that list for promotion to the next higher regular grade without regard to length of service. However, no officer may be considered for promotion under this section more than two years before the date on which it is anticipated that he will be promoted if recommended, and unless the same board considers all officers above him on that list who are not on a recommended list.

[(d) The names of promotion-list officers recommended for promotion under this section shall be carried on permanent recommended lists of their grade and promotion list in the same order among themselves as on the applicable promotion list, and they shall be promoted in that order. A promotion may be made whenever there is a vacancy; but it is not mandatory that the authorized numbers be maintained in any grade on any promotion list.

[(e) Whenever an officer is promoted under subsection (b), all officers in the same grade and on the same promotion list whose names are on the recommended list above that of the officer who must be promoted because of length of service shall be promoted at the same time and shall retain among themselves their existing seniority.

[(h) A promotion-list officer who has been twice considered and not recommended for promotion to any one regular grade may not again be considered for promotion under this section.

[§ 3300. Commissioned officers: promotion to captain, major, or lieutenant colonel; selection board procedure

[(a) When promotion-list officers in the regular grade of first lieutenant, captain, or major are to be considered, under section 3299 of this title, by a selection board for promotion to the next higher regular grade to fill existing or anticipated vacancies, the Secretary of the Army may direct the board to—

[(1) consider officers in the specified grade in the order of their seniority on the promotion list concerned;

[(2) recommend those who are fully qualified for promotion;

[(3) pass over those not so qualified; and

[(4) continue this procedure until the number of officers specified by him is recommended.

[(b) When a promotion-list officer in the regular grade of first lieutenant, captain, or major must be considered under section 3299 of this title for promotion because of length of service, or because he is on a promotion list above an officer who must be considered for that reason, the Secretary may—

[(1) furnish the board a list of officers to be considered for promotion to the grade concerned; and

[(2) direct the board to recommend the officers on that list whom it considers fully qualified for promotion.

[(c) Instead of the procedures set forth in subsection (a) or (b), the Secretary may furnish to the board a list of promotion-list officers to be considered and may direct it to recommend a number specified by him for promotion. The board shall recommend those officers whom it considers to be the best qualified. However, the number prescribed by the Secretary for recommendation must be at least 80 percent of those listed for consideration for the first time.

[§ 3302. Commissioned officers; Medical, Dental, and Veterinary Corps: promotion to captain, major, or lieutenant colonel; professional examination

[(a) No commissioned officer of the Medical Corps or the Veterinary Corps whose regular grade is below lieutenant colonel may be promoted in the Regular Army until he passes an examination of his professional fitness before an examining board composed of at least three commissioned officers of the Regular Army in the Medical Corps selected by the Secretary of the Army. No commissioned officer of the Dental Corps whose regular grade is below lieutenant colonel may be promoted in the Regular Army until he passes an examination of his professional fitness before an examining board composed of one commissioned officer of the Regular Army in the Medical Corps, and two commissioned officers of the Regular Army in the Dental Corps, selected by the Secretary. The examination shall be prescribed by the Secretary and shall be held at such time before the right to promotion accrues as may be in the best interest of the Army.

[(b) If an officer of the Medical, Dental, or Veterinary Corps in the regular grade of first lieutenant or captain is found disqualified for promotion by the examining board, the Secretary shall detail a board of review to consider the findings of the examining board.

[(c) A board of review shall be composed in the same manner as an examining board, except that its members must be senior in rank to the officer examined, and must not have served on the examining board that examined him.

[(d) If the board of review concurs in the findins of the examining board, the officer shall be honorably discharged with one year's pay. If it does not concur in the findings, the officer shall be considered qualified and shall be promoted.

[(e) An officer of the Medical, Dental, or Veterinary Corps in the regular grade of major who fails his first examination for promotion shall be suspended from promotion and reexamined as soon as practicable after one year from the date of his first examination. While he is so suspended from promotion, his name shall be removed from the recommended list and the years of service with which he is entitled to be credited for promotion purposes shall be reduced, if necessary, as provided in section 3303(b) of this title.

[(f) If on reexamination such a major is found qualified, his name shall be restored to the recommended list and he is eligible for promotion. If he is found disqualified for promotion, he shall be treated in the manner provided for deferred officers under section 3303(d) of this title.

[(g) While an officer is suspended from promotion under subsection (e), his right to promotion passes successively to the officers below him who are in the same grade and on the same promotion list, and who are or may become eligible for promotion.

[(h) If the needs of the Army require that an officer entitled to promotion upon examination under subsection (a) be absent from a place where an examining board can be convened, the officer may be promoted, subject to examination as soon as practicable. However, if he is thereafter examined and found disqualified for that promotion, and if the proceedings are approved by the Secretary, he shall be treated as if he had been examined before promotion and had failed.

[(i) If an officer who is found qualified for promotion under this section dies in line of duty after the occurrence of a vacancy that would entitle him to that promotion because of his seniority and before promotion, the President may issue, or have issued, an appropriate commission in the name of that officer. A commission issued under this subsection shall issue as of the date of the vacancy, and the officer's name shall be carried on the records of the Department of the Army as if he had served in the grade and branch in which posthumously commissioned, from the date of the vacancy to the date of his death. No person is entitled to any bonus, gratuity, pay, or allowance because of this subsection.

[§ 3303. Commissioned officers: effect of failure of promotion to captain, major, or lieutenant colonel

[(a) In this subtitle, "deferred officer" means a promotion-list officer considered for promotion to the grade of captain, major, or lieutenant colonel under section 3299 of this title, but not recommended for promotion.

[(b) The years of service with which a deferred officer is entitled to be credited for promotion purposes shall be reduced so that one year after the date on which he would have been promoted had he been recommended by a selection board he will not have more than 7, 14, or 21 years of service, if in the grade of first lieutenant, captain, or major, as the case may be.

[(c) A deferred officer shall be considered again by the next selection board considering officers of his grade and promotion list. If recommended by this board, his name shall be placed on the applicable recommended list with the other officers recommended by the board, in the same order among themselves as on the promotion list, but below officers placed on that list by an earlier board. If a deferred officer is promoted upon the recommendation of the next board considering officers of his grade, his first failure does not count as a failure of selection when he is thereafter considered for promotion to another regular grade.

[(d) A deferred officer who is not recommended by the next selection board considering officers of his grade and promotion list shall—

[(1) if he is eligible, be retired under section 3913 of this title;

[(2) if he is not eligible for retirement under section 3913 of this title, but is eligible for retirement under any other provision of law, be retired under that law on the date when he would have been retired under section 3913 of this title if he were eligible; or

[(3) if he is not eligible for retirement under section 3913 of this title or any other provision of law, be honorably discharged on such date as may be requested by him and approved under regulations to be prescribed by the Secretary of the Army, but not later than the first day of the seventh calendar month after the Secretary approves the report of that board, with severance pay computed by multiplying his years of service, but not more than 12, computed under section 3927(a) of this title, by two months' basic pay of the grade in which he is serving on the date of his discharge.

However, no person is entitled to severance pay under this section in an amount that is more than $15,000.

[(e) For the purposes of subsection (d)(3), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

[§3305. Commissioned officers: promotion to colonel

[(a) Having in view the number of actual and anticipated vacancies in any promotion list in the regular grade of colonel and the number of officers desired in that grade on that promotion list, the Secretary of the Army shall furnish to selection boards lists of officers in the regular grade of lieutenant colonel, in order of seniority in regular grade, to be considered by those boards. The Secretary may not furnish the name of any officer to the board unless he furnishes to it the names of all officers above that officer on that promotion list who are not on a recommended list. He shall direct the boards to recommend a number prescribed by him for promotion to the grade of colonel. The list furnished may not contain the name of any officer who is on a recommended list for promotion to that grade. The board shall recommend the prescribed number of those officers whom it considers to be the best qualified.

[(b) Whenever the Secretary considers that the number of officers in the regular grade of colonel in any of the branches on the Army promotion list is or may become seriously unbalanced, he may direct that, of the officers recommended, prescribed numbers be recommended for service in specified branches.

[(c) The names of officers recommended for promotion to the regular grade of colonel shall be entered at the foot of, and carried on, the appropriate permanent recommended list for promotion to that grade in the same order among themselves as on the applicable promotion list. Officers shall be promoted in that order when there is a vacancy in that grade for that list. A vancancy in that grade may be filled at any time. it is not mandatory that the authorized numbers be maintained in the grade of colonel on any promotion list.

[(d) The ratio of the number of officers on any promotion list who are named for consideration for promotion to the regular grade of colonel, to the number directed to be recommended, may be prescribed by the Secretary.

[(e) No officer may be considered for promotion to the regular grade of colonel more than two years before the date on which it is anticipated that he will be promoted if recommended.

[(f) An officer must complete at least one year of service in the regular grade of lieutenant colonel before being nominated for promotion to the regular grade of colonel.

[§ 3306. Commissioned officers: promotion to brigadier general

[(a) Having in view the number of actual and anticipated vacancies in the regular grade of brigadier general and the number of officers desired in that grade, the Secretary of the Army shall furnish to selection boards lists of officers in the regular grade of colonel, in order of seniority in regular grade, to be considered by those boards. He shall direct the boards to recommend a number prescribed by him for promotion to the grade of brigadier general, but he need not direct the recommendation of a number sufficient to maintain the authorized number for that grade. The list furnished may not contain the name of any officer who is on a recommended list for promotion to that grade. The Secretary may further direct that a specified number of those recommended be officers with experience qualifying them for service in or with specified branches. The board shall recommend the prescribed number of those officers whom it considers to be best qualified.

[(b) The names of officers recommended for promotion to the regular grade of brigadier general shall be entered at the foot of, and carried on, the permanent recommended list for promotion to that grade, in the order to be determined by the Secretary.

[(c) If an officer is recommended for promotion to the regular grade of breigadier general and is not removed from the list by the President, he may be nominated and appointed as soon as a vacancy exists in the authorized number for that grade.

[(d) The ratio of the number of officers on any promotion list who are named for consideration for promotion to the regular grade of brigadier general, to the number directed to be recommended, may be prescribed by the Secretary.

[(e) No officer may be considered for promotion to the regular grade of brigadier general more than one year before the date on which it is anticipated that he will be promoted if recommended.

[(f) An officer must complete at least one year of service in the regular grade of colonel before being nominated for promotion to the regular grade of brigadier general.

[(g) This section does not apply to the appointment of chiefs or assistant chiefs of branches.

[§ 3307. Commissioned officers: promotion to major general

[(a) Having in view the number of actual and anticipated vacancies in the regular grade of major general and the number of officers desired in that grade, the Secretary of the Army shall furnish to selection boards lists of officers in the regular grade of brigadier general, in order of seniority in regular grade, to be considered by those boards. He shall direct the boards to recommend a number prescribed by him for promotion to the grade of major general, but he need not direct the recommendation of a number sufficient to maintain the authorized number for that grade. The list furnished may not contain the name of any officer who is on a recommended list for promotion to that grade. The Secretary may further direct that a specified number of those recommended be officers with experience qualifying them for service in or with specified branches. The board shall recommend the prescribed number of those officers whom it considers to be best qualified.

[(b) The names of officers recommended for promotion to the regular grade of major general shall be entered at the foot of, and carried on, the permanent recommended list for promotion to that grade, in the order to be determined by the Secretary.

[(c) If an officer is recommended for promotion to the regular grade of major general and is not removed from the list by the President, he may be nominated and appointed as soon as a vacancy exists in the authorized number for that grade.

[(d) The ratio of the number of officers on any promotion list who are named for consideration for promotion to the regular grade of major general, to the number directed to be recommended, may be prescribed by the Secretary.

[(e) No officer may be considered for promotion to the regular grade of major general more than one year before the date on which it is anticipated that he will be promoted if recommended.

[(f) An officer must complete at least one year of service in the regular grade of brigadier general before being nominated for promotion to the regular grade of major general.

[(g) This section does not apply to the appointment of chiefs or assistant chiefs of branches.

[§3308. Commissioned officers: effect of removal from recommended list by President or failure of confirmation by Senate

[The President may remove from a recommended list for promotion to any grade the name of any promotion-list officer or brigadier general of the Regular Army who in his opinion is not qualified for promotion. If an officer's name is so removed, or if the Senate does not consent to his appointment, he continues to be eligible as if he had not been considered for promotion and may be recommended by the next selection board considering officers of his grade. If he is promoted on the recommendation of that board, he has the same date of rank and place on the promotion list that he would have had if he had been promoted as a result of his original selection. If the second board considers but does not recommend an officer who would be subject to elimination for second failure of selection for promotion to the grade concerned, or if he again fails of promotion because his name is removed from the recommended list by the President or because the Senate does not consent to his appointment, he shall be eliminated from the active list under section 3303 of this title.

[§3309. Commissioned officers: physical examination for promotion

[(a) The President may prescribe a system of physical examination for all commissioned officers of the Regular Army in grades below brigadier general to determine their fitness for promotion in the Regular Army. Each examination shall be given before the right to promotion accrues.

[(b) If the needs of the Army require that an officer entitled to promotion upon physical examination under subsection (a) be absent from a place where an examining board can be convened, the officer may be promoted subject to examination as soon as practicable. However, if he is thereafter examined and found physically disqualified for that promotion, and if the proceedings are approved by the Secretary of the Army, he shall be treated as if he had been examined before promotion and had failed.

[(c) If a commissioned officer fails to pass the physical examination and is reported unfit for promotion, the officer next below him on a recommended list for promotion who has passed the examination and is otherwise qualified shall be promoted.]

§ 3310. Warrant officers: original appointment; qualifications

Original appointments as warrant officers in the Regular Army shall be made from persons who have served on active duty at least one year in the Army.

[§ 3312. Officers: acceptance of promotion

[(a) An officer who is promoted in the Regular Army is considered to have accepted his promotion on the date of the order announcing it, unless he expressly declines the promotion. He is entitled to the pay and allowances of the higher grade from that date, unless entitled to them from an earlier date under another provision of law.

[(b) An officer need not take the oath of office upon promotion if his service since last taking it has been continuous.

[§ 3313. Suspension of laws for promotion or mandatory retirement or separation during war or emergency

[In time of war, or of emergency declared by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of commissioned officers of the Regular Army.

[§ 3314. Commissioned officers: promotion not to be delayed by another appointment

[The promotion to a higher regular grade of a commissioned officer of the Regular Army who is on a recommended list awaiting promotion may not be withheld or delayed because of the original appointment of any other person to a commissioned grade in the Regular Army. This section does not apply to appointments in the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps.]

CHAPTER 337—APPOINTMENTS AS RESERVE OFFICERS

Sec.

3351. Officers: Army National Guard of United States.
3352. Officers; Army Reserve: transfer from Army National Guard of United States.
3353. Commissioned officers: [appointment;] service credit *upon original appointment*.
3354. Commissioned officers: appointment of warrant officers and enlisted members of Army National Guard of United States; status.
3357. Commissioned officers; Army Reserve: for service in Army Nurse Corps or Army Medical Specialist Corps.
3359. Commissioned officers: original appointment; determination of grade.
3360. Commissioned officers: promotion service.
3362. Commissioned officers: selection boards.
3363. Commissioned officers: selection boards; general procedure.
3364. Commissioned officers: selection for promotion; order of promotion; zone of consideration list; declination of promotion.
3365. Commissioned officers: promotion of second lieutenants not assigned to units.
3366. Commissioned officers: promotion of first lieutenants, captains, and majors; mandatory consideration.
3367. Commissioned officers: promotion of first lieutenants, captains, and majors to fill vacancies.

3368. Commissioned officers: promotion of first lieutenants, captains, and majors not assigned to units; second consideration.
3369. Commissioned officers: Army Reserve; first promotion of officers not assigned to units after transfer from unit or from Army National Guard of United States.
3370. Commissioned officers: promotion to grade of colonel to fill vacancies.
3371. Commissioned officers: promotion of brigadier generals and colonels not assigned to units.
3375. Commissioned officers: generals ceasing to occupy commensurate positions.
3378. Commissioned officers: promotion of officers removed from active status.
3380. Commissioned officers: election to continue on active duty after promotion.
3382. Commissioned officers: Army Reserve; promotion of second lieutenants assigned to units.
3383. Commissioned officers: Army Reserve; promotion to grades of first lieutenant, captain, major, lieutenant colonel, and colonel to fill vacancies in units.
3384. Commissioned officers: Army Reserve; promotion to grade of brigadier general or major general to fill vacancies in units.
3385. Commissioned officers: Army National Guard of United States; promotion upon Federal recognition.
3386. Commissioned officers: promotion upon release from active duty.
3388. Commissioned officers: Army Reserve; effect of entering upon active duty while eligible for promotion.
3389. Commissioned officers: promotion to higher reserve grade after temporary appointment.
3390. Commissioned officers: Army National Guard of United States; procedure for promotion to higher reserve grade after temporary appointment.
3392. Commissioned officers: reserve grade of adjutants general and assistant adjutants general.
3393. Commissioned officers: sea or foreign service not to be required for promotion.
3394. Officers: acceptance of promotion.
3395. During war.
3396. Exclusion of certain officers.

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§ 3353. Commissioned officers: [appointment;] service credit *upon original appointment*

[(a) For the purposes of chapters 337 and 363 of this title, a person who is appointed as a reserve commissioned officer of the Army may be credited, upon his appointment, with service in an active status that reflects his combined years of experience and education and such other qualifications as the Secretary of the Army may by regulation prescribe.

[(b) A person covered by subsection (a) who is appointed with a view to assignment or designation in one of the following categories shall be credited, upon his appointment, and for the purposes of subsection (a), with at least the following service in an active status:

[(1) Medical Corps—four years.
[(2) Dental Corps—three years.
[(3) Veterinary Corps—three years.
[(4) Judge Advocate General's Corps—three years.
[(5) Chaplains—three years.

[(c) A person covered by subsection (a) who is appointed with a view to assignment as a medical service officer, and who holds a degree of doctor of philosophy, or a comparable degree, in a science that the Secretary determines is allied to medicine may be credited upon his appointment, and for the purposes of subsection (a), with at least three years of service in an active status.

[(d) The Secretary shall report to the Committees on Armed Services of the Senate and House of Representatives by March 1 of each year on the number, categories, and grades of the reserve officers (other than in the Medical Corps or Dental Corps) originally appointed in the reserve grade of captain or above during the preceding calendar year.]

(a)(1) For the purpose of chapters 337 and 363 of this title and under regulations prescribed by the Secretary of Defense, a person receiving an original appointment as a reserve commissioned officer in the Army shall be credited at the time of such appointment with any service as a commissioned officer, except service as a commissioned warrant officer, that he performed in an active status in any armed force before such appointment.

(2) The Secretary of Defense shall prescribe regulations to authorize the Secretary of the Army to limit the amount of prior active commissioned service with which a person receiving an original appointment may be credited under paragraph (1), or to deny any such credit, in the case of a person who at the time of such appointment is credited with constructive service under subsection (b).

(b)(1) Under regulations prescribed by the Secretary of Defense, the Secretary of the Army shall credit a person who is receiving an original appointment as a reserve commissioned officer in the Army and who has advanced education or training or special experience with constructive service for such education, training, or experience as follows:

(A) One year for each year of advanced education beyond the baccalaureate degree level, for persons appointed in officer categories requiring such advanced education or an advanced degree as a prerequisite for appointment as a commissioned officer. (Except as provided in clause (E), in determining the years of constructive service under this clause, the Secretary of the Army shall grant credit for only the number of years normally required to complete the advanced education or receive the advanced degree.)

(B) Credit in the amount of any period of advanced education in a health profession (other than medicine and dentistry) beyond the baccalaureate degree level which exceeds the basic education criteria for appointment as an officer, if such advanced education will be directly used by the Army.

(C) Additional credit of (i) not more than one year for internship or equivalent graduate medical, dental, or other formal professional training required by the armed forces, and (ii) not more than one year for each additional year of such graduate-level training or experience creditable toward certification in a specialty required by the Army.

(D) Additional credit, in unusual cases, based on special experience in a particular field.

(E) Additional credit of one year for advanced education in a health profession if the number of years of baccalaureate education completed by 75 percent or more of the students entering advanced training in that health profession exceeds, by one or more, the minimum number of years of preprofessional education required by a majority of institutions which award degrees in that health profession. The percentage of such persons shall be computed on an annual basis for each health profession

from the data for the year in which the person being appointed was admitted to a professional school. However, a person may not receive additional credit under this clause if the amount of his baccalaureate education does not exceed, by one or more, the minimum number of years of preprofessional education required by a majority of institutions which award degrees for that health profession, determined on the basis prescribed in the preceding sentence.

(F) Additional credit for experience as a physician or dentist, if appointed in the Medical or Dental Corps.

(2) Except as authorized by the Secretary of the Army in individual cases and under regulations prescribed by the Secretary of Defense in the case of a medical or dental officer, the amount of constructive service credited an officer under this subsection may not exceed the amount required in order for the officer to be eligible for an original appointment in the grade of major.

(3) Constructive service credited an officer under this subsection is in addition to any service credited that officer under subsection (a) and shall be credited at the time of the original appointment of the officer.

(c) Constructive service may not be credited under subsection (b) for education, training, or experience obtained while serving on active duty.

(d) If the Secretary of Defense determines that the number of qualified judge advocates serving on active duty in the Army in grades below major is critically below the number needed by the Army in such grades, he may authorize the Secretary of the Army to credit any person receiving an original appointment in the Judge Advocate General's Corps with a view to an immediate call to active duty with a period of constructive service in such an amount (in addition to any period of service credited such person under subsection (b)(1)) as will result in the grade of such person being that of captain and the date of rank of such person being junior to that of all other officers of the same grade serving on active duty.

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§ 3360. Commissioned officers promotion service

(a) To be eligible under this chapter for (1) consideration for promotion, (2) examination for Federal recognition, or (3) promotion, a Reserve commissioned officer must be in an active status.

(b) For the purposes of sections 3363, 3364, 3365, 3366(a) (column 2), 3367, 3370, 3371(a), 3382, 3819, and 3820(c) of this title, an officer's years of service are computed by adding—

(1) all service that he has, or is credited by the Secretary of the Army with having, in his current grade in the Army, or in the discretion of the Secretary of the Army, any other armed force, while in an active status or *as a regular officer* on the active list *or on the active-duty list*;

(2) for a person who was on active duty (other than for training) before September 3, 1945, all service while on active duty (other than for training) before January 1, 1949, in the Army or, in the discretion of the Secretary, any other armed force, in a temporary grade equal to or higher than his current reserve grade; and

(3) for a person originally appointed in a grade below colonel, all service credited under section 3353 of this title or section 22 of [the Act enacting this section] *Public Law 85-861*, that exceeds the minimum years of service prescribed by section 3359 of this title for the grade in which he is appointed.

No service may be counted more than once. For a person credited with service under section 3353 of this title or section 22 of [the Act enacting this section] *Public Law 85-861*, no service before appointment or transfer may be counted under clause (1) or (2).

(c) For the purposes of section 3369 of this title, an officer's years of service are the greater of—

(1) the sum of (A) his years of service as a commissioned officer of any component of the armed forces or of the Army without specification of component, (B) his years of service before June 15, 1933, as a commissioned officer in the federally recognized National Guard or in a federally recognized commissioned status in the National Guard, and in the National Guard after June 14, 1933, if his service therein was continuous from the date of his Federal recognition as an officer therein to the date of his appointment in the National Guard of the United States, and (C) the years of service credited to him under section 3353 of this title or section 22 of [the Act enacting this section] *Public Law 85-861*; and

(2) the number of years by which his age exceeds 25 years.

No service may be counted more than once. For a person credited with service under section 3353 of this title or section 22 of [the Act enacting this section] *Public Law 85-861*, no service before appointment may be counted.

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§ 3396. Exclusion of officers on the active-duty list

The preceding sections of this chapter, except section 3353, do not apply to reserve officers on the active-duty list.

CHAPTER 339—TEMPORARY APPOINTMENTS

Sec.

[3441. General rule.
[3442. Commissioned officers; regular and reserve components; appointment in higher grade.
[3444. Commissioned officers: during war or emergency.
[3445. Officers: additional appointments during war or emergency.]
3446. Retention on active duty.
[3447. Appointments in commissioned grade: how made; how terminated.
[3448. Warrant officers: grades; appointment.
[3449. Warrant officers: promotion.
[3451. Officers: acceptance of appointment in higher grade.
[3452. Officers: Medical and Dental Corps: temporary promotion to captain.

[§ 3441. General rule

[Temporary appointments may be made only in the Army without specification of component.

[§ 3442. Commissioned officers; regular and reserve components: appointment in higher grade

[(a) Whenever the number of officers of the Regular Army in any regular grade above second lieutenant is less than the number authorized, the vacancies may be filled by the appointment of qualified officers, as prescribed in subsection (c).

[(b) Whenever, under authorization by Congress, the number of commissioned officers of the Regular Army on active duty plus the number of other commissioned officers of the Army ordered to active duty for a period of more than 30 days is more than the authorized strength of the Regular Army in commissioned officers on the active list, the Secretary of the Army shall determine the additional number of officers in each of the commissioned grades based upon the number of officers serving on active duty and the tasks being performed by the Army. Vacancies resulting from that determination may then be filled by the appointment of qualified officers, as prescribed in subsection (c).

[(c) Subject to subsections (a) and (b), a regular commissioned officer, or a reserve commissioned officer who is serving on active duty, may be appointed in a temporary grade that is equal to or higher than his regular or reserve grade, without vacating any other grade held by him. Under regulations to be prescribed by the Secretary, appointments made under this subsection shall be made on a fair and equitable basis. Selections shall be based upon ability and efficiency with regard being given to seniority and age.

[§ 3444. Commissioned officers: during war or emergency

[(a) In time of emergency declared by Congress or the President, and in time of war, the President may appoint any qualified person, including a person who is not a Regular or Reserve, in any temporary commissioned grade.

[(b) An officer appointed under subsection (a) may be ordered to active duty for such period as the President prescribes.

[(c) Unless sooner vacated, an appointment under subsection (a) is effective during the war or emergency in which it is made and for six months thereafter.

[(d) For the purposes of determining grade, position on a promotion list, seniority in temporary grade, and eligibility for promotion, an officer of the Medical or Dental Corps, who is appointed in a temporary grade under subsection (a) shall, when he enters on active duty, be credited with the constructive service authorized by section 3294(b) of this title.

[§ 3445. Officers: additional appointments during war or emergency

[(a) In addition to appointments authorized under section 3442 of this title in time of war or of national emergency declared by the President, a regular officer or a reserve grade, without vacating that grade.

[(b) In addition to appointments authorized under subsection (a) of this section, and sections 3442 and 3444 of this title, in time of war a person who holds no commissioned grade in the Regular Army may be appointed in any temporary commissioned grade.

[(c) Unless sooner vacated, the appointment of an officer under subsection (b), except a member of the Regular Army, is effective during the war in which it is made and for six months thereafter.

[(d) Each officer appointed under subsection (b) shall, unless he is a member of the Regular Army, be relieved from active duty, at his request, within six months after the termination of the war.]

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[§ 3447. Appointments in commissioned grade: how made; how terminated

[(a) The appointment of a person under sections 3442, 3444, and 3445 of this title shall be made without reference to any other appointment that he may hold in the Army.

[(b) Temporary appointments of commissioned officer in the Regular Army shall be made by the President alone in grades below lieutenant colonel and by the President, by and with the advice and consent of the Senate, in grades of lieutenant colonel and above. Temporary appointments of commissioned officers in reserve components of the Army shall be made by the President alone in grades below lieutenant colonel and by the President, by and with the advice and consent of the Senate, in grades above major.

[(c) The President may vacate at any time a temporary appointment in a commissioned grade.

[§ 3448. Warrant officers: grades; appointment

[(a) The temporary warrant officer grades in the Army are those prescribed for regular warrant officers by section 555(a) of this title.

[(b) Whenever, under authorization by Congress, the number of commissioned officers of the Army on active duty is more than the authorized strength of the Regular Army in commissioned officers on the active list, the Secretary of the Army shall determine the additional number needed in each of the warrant officer grades based on the number of warrant officers serving on active duty and the tasks being performed by the Army. The Secretary may appoint, by warrant, qualified persons as warrant officers to fill the vacancies resulting from that determination. Appointments under this subsection continue in effect during the pleasure of the Secretary. While holding such an appointment, a warrant officer may be ordered to active duty with any unit of the Army.

[(c) A warrant officer appointed under subsection (b) is entitled—

[(1) to count all periods of active duty under the appointment as warrant or enlisted service for all purposes; and

[(2) to the benefits of all laws and regulations applicable to the retirement, pensions, and disability of members of the Army on active duty.

[§ 3449. Warrant officers: promotion

[Temporary promotions in warrant officer grades shall be governed by such regulations as the Secretary of the Army may prescribe.

[§ 3451. Officers: acceptance of appointment in higher grade

[(a) An officer who is promoted to a temporary grade is considered to have accepted his promotion on the date of the order announcing it, unless he expressly declines the promotion. He is entitled to the pay and allowances of the higher grade from that date, unless entitled to them from an earlier date under another provision of law.

[(b) An officer need not take the oath of office upon promotion if his service since last taking it has been continuous.

[§ 3452. Officers: Medical and Dental Corps: temporary promotion to captain

[Notwithstanding any other provision of law, an officer of the Medical Corps or Dental Corps may be promoted to the temporary grade of captain at any time after the first anniversary of the date upon which he graduated from a medical, osteopathic, or dental school, as the case may be.]

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3503. Retired Commissioned officers: status.
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* * * * * * *

[§ 3494. Commissioned officers: grade in which ordered into active duty.

[A reserve commissioned officer who is ordered to active duty shall be ordered to that duty in his reserve grade unless the Secretary of the Army, in his discretion, orders him to active duty (other than for training) in a higher temporary grade. However, a reserve commissioned officer who is selected for participation in a program under which he will be ordered to active duty for at least one academic year at a civilian school or college may, upon his request, be ordered to that duty in a temporary grade that is lower than his reserve grade, without affecting his reserve grade.]

* * * * * * *

[§ 3504. Retired members: limitations; grade.

[(a) The President may order any retired member of the Regular Army to active duty. He may assign a member ordered under this subsection to such duties as he considers necessary in the interests of national defense.

[(b) When ordered to active duty, a retired commissioned officer of the Army any part of whose service was in the Corps of Engineers is eligible to fill any position required by law to be filled by a commissioned officer of the Corps of Engineers.

[(c) Whenever any of the following persons is ordered to active duty, he shall be ordered in his retired grade:

[(1) Any officer who served four years as Chief of the Medical Service Corps.

[(2) Any officer who served two and one-half years as Chief of the Army Nurse Corps or as Chief or an assistant chief of the Women's Medical Specialist Corps or the Army Medical Specialist Corps.

[(3) Any officer who served two and one-half years as Director or Deputy Director of the Women's Army Corps.]

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[§3531. Chief of Staff to President: appointment

[The President, by and with the advice and consent of the Senate, may appoint a general officer of the Army as the Chief of Staff to the President. Unless entitled to the rank, pay, and allowances of a grade above lieutenant general under another provision of law, an officer so appointed by and with the advice and consent of the Senate is entitled to the rank, pay, and allowances of a general, and is additional to the numbers otherwise authorized for that grade.

[§3532. Assistant to Comptroller of Department of Defense: detail, grade

[A colonel on the active list of the Regular Army who is detailed as special assistant to the Comptroller of the Department of Defense, has the grade of brigadier general while so serving, unless he is entitled to a higher grade.]

* * * * * * *

§3534. Corps of Engineers: detail of officers to assist [Commissioner] *Mayor* of District of Columbia

The President may detail not more than three officers assigned to the Corps of Engineers to assist the [Commissioner] *Mayor* of the District of Columbia in discharging his duties.

[§3535. Assistant to Chief of Engineers

[An officer assigned as Assistant to the Chief of Engineers in charge of civil works, including river and harbor and flood control improvements, is entitled to the rank, pay, and allowances of a brigadier general while so serving.]

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CHAPTER 345—RANK AND COMMAND

Sec.
[3571. Rank: commissioned officers on active duty.]
3572. Rank: commissioned officers serving under temporary appointments.
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3579. Command: commissioned officers of Army Medical Department.
3580. Command: commissioned officers of Women's Army Corps.
3581. Command: chaplains.
[3582. Command: retired officers.

[§3571. Rank: commissioned officers on active duty

[(a) Commissioned officers of the Army on active duty in the same grade rank among themselves according to date of rank. The date of rank—

[(1) for an officer of the Regular Army serving in his regular grade, is that stated in his commission or letter of appointment;

[(2) for an officer of the Regular Army serving in a temporary grade, is his date of appointment in that grade, unless adjusted under section 3572 of this title; and

[(3) for a reserve officer, precedes his date of entry on active duty by a period computed by adding—

[(A) the years of service after June 30, 1955, while in his current reserve grade or in any higher reserve grade, that are credited to him under section 1332(a)(2) of this title;

[(B) the days and months of any part of the year preceding his date of entry on active duty, while in his current reserve grade or in any higher reserve grade, that are not credited to him under clause (A), if, under regulations to be prescribed by the Secretary of the Army, his service during that part of a year was satisfactory;

[(C) the periods of active service while in his current reserve grade in any higher reserve grade, that are not credited to him under clause (A) or (B);

[(D) the periods of service, while in his current reserve grade or in any higher reserve grade, that he has performed under section 502, 503, 504, or 505 of title 32, and that are not credited to him under clause (A) or (B); and

[(E) one day for each point for drill or equivalent instruction after June 30, 1955, while in his current reserve grade or in any higher reserve grade, that is credited to him under section 1332(a)(2)(B) of this title and are not credited to him under clause (A) or (B).

[(b) When the dates of rank prescribed by subsection (a) are the same, rank is determined by adding all active commissioned service in the Army, all commissioned service under section 502, 503, 504, or 505 of title 32, and all service credited for points under section 1332(a)(2)(B) of this title.

[(c) When the dates of rank prescribed by subsection (a) and service computed under subsection (b) are the same:

[(1) Regular officers rank before reserve officers.

[(2) Regular officers rank among themselves according to sections 3573 and 3574 of this title.

[(3) Reserve officers rank among themselves according to age.]

* * * * * * *

[§ 3573. Rank: commissioned officers in regular grades of brigadier general and major general; senority list

[(a) The date of rank of an officer whose regular grade is brigadier general is the date of his appointment in that regular grade, if at the time of that appointment he held no temporary general officer grade. The date of rank of an officer whose regular grade is major general is the date of rank he held in the regular grade of brigadier general, if he held that grade at the time of his appointment in the regular grade of major general.

[(b) If at the time of his appointment in his current regular grade such an officer held only a temporary general officer grade, his date of rank is the date of rank he held in that temporary grade, except that if he was promoted to that temporary grade from the temporary grade of brigadier general his date of rank is the date of rank he held in the temporary grade of brigadier general.

[(c) Notwithstanding subsections (a) and (b), the date of rank of such an officer may not be earlier than that of the junior general officer in the same regular grade who was appointed to that grade before him.

[(d) The names of general officers of the Regular Army shall be carried on a senority list in the order of senority in both regular grade and date of rank as determined under subsection (a).

[§ 3574. Rank: commissioned officers in regular grades below brigadier general

[(a) Among commissioned officers of the same grade in the Regular Army who are on the same promotion list, rank in regular grade is determined by the order in which their names appear on that list.

[(b) Among commissioned officers of the same grade in the Regular Army who are not on the same promotion list or not on a promotion list, rank in regular grade is determined—

[(1) by date of rank;

[(2) if the dates of rank are the same, by length of continuous active commissioned service in the Regular Army;

[(3) if the dates of rank and length of continuous active commissioned service in the Regular Army are the same, by rank established at the time of original appointment in the Regular Army; and

[(4) in other cases, by the Secretary of the Army.

[(c) Rank among the graduates of each class at the United States Military Academy, United States Naval Academy, or United States Air Force Academy who, upon graduation, are appointed in the Regular Army shall be fixed under regulations to be prescribed by the Secretary.]

* * * * * * *

§ 3579. Command: commissioned officers of Army Medical Department

(a) Except as provided in subsection (c), a commissioned officer of the Army Medical Department, [other than an officer of the Army Nurse Corps or Army Medical Specialist Corps,] is not entitled to exercise command because of his rank, except within the Army Medical Department.

[(b) An officer of the Army Nurse Corps or Army Medical Specialist Corps may exercise command only within his branch, or over persons placed under his charge.]

[(c)] *(b)* An officer of the Medical Service Corps may exercise command of troops that are not part of the Army Medical Department whenever authorized by the Secretary of the Army. The Secretary of the Army may delegate such authority to appropriate commanders as the interest of the Army may require.

* * * * * * *

[§ 3582. Command: retired officers

[A retired officer has no right to command except when on active duty.]

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[3784. Removal of officer; action by Secretary of the Army upon recommendation.
[3785. Rights and procedures.
[3786. Officer considered for removal: voluntary retirement or honorable discharge; severance benefits.
[3787. Officers eligible to serve on boards.

[§ 3781. Selection boards: composition; duties

[The Secretary of the Army may at any time convene a board of officers to review the record of any commissioned officer on the active list of the Regular Army to determine whether he shall be required, because his performance of duty has fallen below standards prescribed by the Secretary, to show cause for his retention on the active list.

[§ 3782. Boards of inquiry: composition; duties

[(a) Boards of inquiry, each composed of three or more officers, shall be convened, at such places as the Secretary of the Army may prescribe, to receive evidence and make findings and recommendations whether an officer, required to show cause under section 3781 of this title, shall be retained on the active list of the Regular Army.

[(b) A fair and impartial hearing before a board of inquiry shall be given to each officer so required to show cause for retention.

[(c) If a board of inquiry determines that the officer has failed to establish that he should be retained on the active list, it shall send the record of its proceedings to a board of review.

[(d) If a board of inquiry determines that the officer has established that he should be retained on the active list, his case is closed. However, at any time after one year from the date of that determination, he may be again required to show cause for retention under section 3781 of this title.

[§ 3783. Boards of review: composition; duties

[(a) Boards of review, each composed of three or more officers, shall be convened by the Secretary of the Army, at such times as he may prescribe, to review the records of cases of officers recommended by boards of inquiry for removal from the active list of the Regular Army under section 3782 of this title.

[(b) If, after reviewing the record of the case, a board of review determines that the officer has failed to establish that he should be retained on the active list, it shall send its recommendation to the Secretary for his action.

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1462

DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

NOVEMBER 13, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NICHOLS, from the Committee on Armed Services, submitted the following

REPORT

[To accompany S. 1918]

[Including cost estimate of the Congressional Budget Office]

The Committee on Armed Services to whom was referred the bill (S. 1918) to amend title 10, United States Code, to revise and make uniform the provisions of law relating to appointment, promotion, separation, and retirement of regular commissioned officers of the Army, Navy, Air Force, and Marine Corps, to establish the grade of commodore admiral in the Navy, to equalize the treatment of male and female commissioned officers, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill is a complete substitute therefor and appears in italic type in the reported bill.

The amendment to the title of the bill makes minor technical wording changes.

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[(c) If, after reviewing the record of the case, a board of review determines that the officer has established that he should be retained on the active list, his case is closed. However, at any time after one year from the date of that determination, he may be again required to show cause for retention under section 3781 of this title.

[§ 3784. Removal of officer: action by Secretary of the Army upon recommendation

[The Secretary of the Army may remove an officer from the active list of the Regular Army if his removal is recommended by a board of review under this chapter. The Secretary's action in such a case is final and conclusive.

[§ 3785. Rights and procedures

[Each officer under consideration for removal from the active list of the Regular Army under this chapter shall be—

[(1) notified in writing, at least 30 days before the hearing of this case by a board of inquiry, that he is being required to show cause for retention on the active list;

[(2) allowed reasonable time, as determined by the board of inquiry under regulations of the Secretary of the Army, to prepare his defense;

[(3) allowed to appear in person and by counsel at proceedings before a board of inquiry; and

[(4) allowed full access to, and furnished copies of, records relevant to his case at all stages of the proceeding.

[§ 3786. Officer considered for removal: voluntary retirement or honorable discharge; severance benefits

[(a) At any time during proceedings under this chapter and before the removal of an officer from the active list of the Regular Army, the Secretary of the Army may grant his request—

[(1) for voluntary retirement, if he is otherwise qualified therefor; or

[(2) for honorable discharge with severance benefits under subsection (b).

[(b) Each officer removed from the active list of the Regular Army under this chapter shall—

[(1) if on the date of removal he is eligible for voluntary retirement under any law, be retired in the grade and with the pay for which he would be eligible if retired at his request; or

[(2) if on that date he is ineligible for voluntary retirement under any law, be honorably discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than 12, by one month's basic pay of that grade.

[(c) For the purposes of subsection (b)(2), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

[§ 3787. Officers eligible to serve on boards

[(a) No officer may serve on a board under this chapter unless he holds a regular or temporary grade above lieutenant colonel, and is senior in regular grade to and outranks any officer considered by that board.

[(b) No person may be a member of more than one board convened under this chapter for the same officer.

[CHAPTER 360—SEPARATION FROM REGULAR ARMY FOR MORAL OR PROFESSIONAL DERELICTION OR IN INTERESTS OF NATIONAL SECURITY

[Sec.
[3791. Selection boards: composition; duties.
[3792. Boards of inquiry: composition; duties.
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[3795. Rights and procedures.
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[§ 3791. Selection boards: composition; duties

[The Secretary of the Army may at any time convene a board of general officers to review the record of any commissioned officer on the active list of the Regular Army to determine whether he shall be required, because of moral dereliction, professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on the active list.

[§ 3792. Boards of inquiry: composition; duties

[(a) Boards of inquiry, each composed of three or more general officers, shall be convened at such places as the Secretary of the Army may prescribe, to receive evidence and make findings and recommendations whether an officer, required to show cause under section 3791 of this title, shall be retained on the active list of the Regular Army.

[(b) A fair and impartial hearing before a board of inquiry shall be given to each officer so required to show cause for retention.

[(c) If a board of inquiry determines that the officer has failed to establish that he should be retained on the active list, it shall send the record of its proceedings to a board of review.

[(d) If a board of inquiry determines that the officer has established that he should be retained on the active list, his case is closed. However, at any future time, he may be again required to show cause for retention under section 3791 of this title.

[§ 3793. Boards of review: composition; duties

[(a) Boards of review, each composed of three or more general officers, shall be convened by the Secretary of the Army, at such times as he may prescribe, to review the records of cases of officers recommended by boards of inquiry for removal from the active list of the Regular Army under section 3792 of this title.

[(b) If, after reviewing the record of the case, a board of review determines that the officer has failed to establish that he should be retained on the active list, it shall send its recommendation to the Secretary for his action.

[(c) If, after reviewing the record of the case, a board of review determines that the officer has established that he should be retained on the active list, his case is closed. However, at any future time, he may be again required to show cause for retention under section 3791 of this title.

[§ 3794. Removal of officer: action by Secretary of the Army upon recommendation

[The Secretary of the Army may remove an officer from the active list of the Regular Army if his removal is recommended by a board of review under this chapter. The Secretary's action in such a case is final and conclusive.

[§ 3795. Rights and procedures

[Each officer under consideration for removal from the active list of the Regular Army under this chapter shall be—

[(1) notified in writing of the charges against him, at least 30 days before the hearing of his case by a board of inquiry, for which he is being required to show cause for retention on the active list.

[(2) allowed reasonable time, as determined by the board of inquiry under regulations of the Secretary of the Army, to prepare his defense;

[(3) allowed to appear in person and by counsel at proceedings before a board of inquiry; and

[(4) allowed full access to, and furnished copies of, records relevant to his case at all stages of the proceeding, except that a board shall withhold any records that the Secretary determines should be withheld in the interests of national security.

In any case where any records are withheld under clause (4), the officer whose case is under consideration shall, to the extent that the national security permits, be furnished a summary of the records so withheld.

[§ 3796. Officers considered for removal: retirement or discharge

[(a) At any time during proceedings under this chapter and before the removal of an officer from the active list of the Regular Army, the Secretary of the Army may grant his request—

[(1) for volumtary retirement, if he is otherwise qualified therefor; or

[(2) for discharge under subsection (b).

[(b) Each officer removed from the active list of the Regular Army under this chapter shall—

[(1) if on the date of removal he is eligible for voluntary retirement under any law, be retired in the grade and with the pay for which he would be eligible if retired at his request; or

[(2) if on that date he is ineligible for voluntary retirement under any law, be discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than 12, by one month's basic pay of that grade.

[(c) For the purposes of subsection (b)(2), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

[§ 3797. Officers eligible to serve on boards

[(a) No officer may serve on a board under this chapter unless he is senior in regular grade to, and outranks, and officer considered by that board.

[(b) No person may be a member of more than one board convened under this chapter for the same officer.]

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[3818. Regular female members: termination of appointment or enlistment.]
3819. Army Reserve officers: discharge for failure of promotion to first lieutenant.
3820. Army National Guard of United States officers: discharge.

[§ 3814. Regular commissioned officers: discharge during three-year probationary period

[The Secretary of the Army may discharge a regular commissioned officer who has less than three years of continuous service as a commissioned officer therein. However, such an officer may not be discharged because of his marriage, unless the marriage occurred within one year after the date of his original appointment.

[§ 3818. Regular female members: termination of appointment or enlistment.

[(a) The Secretary of the Army may terminate—

[(1) the appointment of a female commissioned officer of the Regular Army, under regulations prescribed by the President; or

[(2) the appointment of a female warrant officer, or the enlistment of a female member, of the Regular Army.

[(b) The appointment of a commissioned officer may not be terminated under subsection (a)(1) by dismissal.

[(c) An enlisted member whose enlistment is terminated under subsection (a)(2) shall be discharged from the Army.]

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CHAPTER 363—SEPARATION OR TRANSFER TO RETIRED RESERVE

* * * * * * *

§ 3848. Twenty-eight years: reserve first lieutenants, captains, majors, and lieutenant colonels

(a) * * *

* * * * * * *

(c) Notwithstanding subsections (a) and (b) of this section, the Secretary of the Army may authorize the retention in an active status until age 60 of any officer of the Army National Guard of the United States who would otherwise be removed from an active status under this section and who—

(1) is assigned to a headquarters or headquarters detachment of a State or territory, the Commonwealth of Puerto Rico, the Canal Zone, or the District of Columbia; or

(2) is employed as a technician under section 709 of title 32[, United States Code,] in a position for which Army National Guard membership is prescribed by the Secretary.

* * * * * * *

§3851. Thirty years or five years in grade: reserve colonels and brigadier generals

(a) * * *

* * * * * * *

(c) Notwithstanding subsections (a) and (b) of this section, the Secretary of the Army may authorize the retention in an active status until age 60 of any officer of the Army National Guard of the United States who would otherwise be removed from an active status under this section and who—

(1) is assigned to a headquarters or headquarters detachment of a State or Territory, the Commonwealth of Puerto Rico, the Canal Zone, or the District of Columbia; or

(2) is employed as a technician under section 709 of title 32[, United States Code,] in a position for which Army National Guard membership is prescribed by the Secretary.

* * * * * * *

§3853. Computation of years of service

For the purpose of determining whether a reserve commissioned officer may be transferred to the Retired Reserve, or discharged, under this chapter, his years of service are the greater of—

(1) the sum of (A) his years of service as a commissioned officer of any component of the armed forces or of the Army without specification of component, (B) his years of service before June 15, 1933, as a commissioned officer in the federally recognized National Guard or in a federally recognized commissioned status in the National Guard, and in the National Guard after June 14, 1933, if his service therein was continuous from the date of his Federal recognition as an officer therein to the date of his appointment in the National Guard of the United States, and (C) the years of service credited to him under section 3353 of this title or section 22 of [the Act enacting this section] *Public Law 85-861;* and

(2) the number of years by which his age exceeds 25 years.

No service may be counted more than once. For a person credited with service under section 3353 of this title or section 22 of [the Act enacting this section] *Public Law 85-861,* no service before appointment may be counted.

* * * * * * *

§3855. Retention in active status of certain officers until age 60

Notwithstanding any other section of this chapter except section 3846, the Secretary of the Army may, with the officer's consent, retain in an active status any reserve officer in the Medical Corps, Dental Corps, Veterinary Corps, *the podiatry specialty in the Medi-*

cal Allied Sciences Section of the Medical Service Corps, the Optometry Section of the Medical Service Corps, the Chaplains, the Army Nurse Corps, or the Army Medical Specialist Corps, but not later than the date on which he becomes 60 years of age. *An officer may be retained in an active status under the authority of this section only to fill a mission-based requirement.*

[CHAPTER 365—RETIREMENT FOR AGE

[Sec.
[3883. Age 60: regular commissioned officers below major general.
[3884. Age 60: regular major generals whose retirement has been deferred.
[3885. Age 62: regular major generals.
[3886. Age 64: regular major generals whose retirement has been deferred; permanent professors of United States Military Academy.
[3888. Computation of years of service: mandatory retirement; regular commissioned offices.
[3889. Computation of retired pay; law applicable.

[§ 3883. Age 60: regular commissioned officers below major general

[Unless retired or separated at an earlier date, each commissioned officer whose regular grade is below major general, other than a professor or the registrar of the United States Military Academy, shall be retired when he becomes 60 years of age, except as provided by section 8301 of title 5.

[§ 3884. Age 60: regular major generals whose retirement has been deferred

[Unless retired or separated at an earlier date, each commissioned officer whose regular grade is below major general, and whose retirement under section 3923 of this title has been deferred under clause (1) of that section, shall be retired when he becomes 60 years of age, except as provided by section 8301 of title 5.

[§ 3885. Age 62: regular major generals

[Unless retired or separated at an earlier date or unless retained under section 3923(2) of this title, each commissioned officer whose regular grade is major general shall be retired when he becomes 62 years of age, except as provided by section 8301 of title 5.

[§ 3886. Age 64: regular major generals whose retirement has been deferred; permanent professors of United States Military Academy

[Unless retired or separated at an earlier date, each commissioned officer whose regular grade is below major general, and whose retirement under section 3923 of this title has been deferred under clause (2) of that section, and each permanent professor and the registrar of the United States Military Academy, shall be retired when he becomes 64 years of age, except as provided by section 8301 of title 5.

[§ 3888. Computation of years of service; mandatory retirement; regular commissioned officers

[For the purpose of computing the retired pay of a commissioned officer of the Regular Army retired under section 3883, 3884, 3885, or 3886 of this title, his years of service are the greatest of—

[(1) the years of service that may be credited to him under section 1405 of this title;

[(2) the years of service credited to him at the time of his original appointment in the Regular Army to determine his eligibility for promotion, except the constructive service credited to him under section 3287(a)(2)(A) or (B) or 3294(b) of this title or under section 506(c) of the Officer Personnel Act of 1947 (61 Stat. 890), plus his years of active commissioned service in the Regular Army after that appointment; or

[(3) his years of service computed under clause (A), (B), or (C), whichever applies, if any:

[(A) For a reserve judge advocate appointed in the Regular Army in the grade of captain in the Judge Advocate General's Department under section 24e of the National Defense Act, as amended (53 Stat. 558)—

[(i) his years of active commissioned service in the Army after becoming 21 years of age, after December 7, 1941, and before the date of that appointment; or

[(ii) the number of days, months, and years by which his age at the time of that appointment exceeded 25 years;

whichever is greater, plus his years of active commissioned service in the Regular Army after that appointment.

[(B) For an officer appointed in the Regular Army, except in the Army Nurse Corps or Army Medical Specialist Corps, before December 31, 1947, other than an officer covered by clause (A) or appointed under the Act of December 28, 1945, ch. 601 (59 Stat. 663), the sum of—

[(i) his years of active commissioned service in the Regular Army after that appointment; and

[(ii) his years of active commissioned service in the Army after becoming 21 years of age and after December 7, 1941, under any earlier appointment.

[(C) For an officer appointed in the Regular Army, except in the Army Nurse Corps or Army Medical Specialist Corps, after December 31, 1947, other than an officer appointed in the Women's Army Corps, Regular Army, under section 108 of the Women's Armed Services Integration Act of 1948 (62 Stat. 361), the sum of—

[(i) his years of active commissioned service in the Regular Army after that appointment; and

[(ii) his years of active commissioned service in the Army after becoming 21 years of age and after December 31, 1947, under an earlier appointment.

[§ 3889. Computation of retired pay: law applicable

[A member of the Army retired under this chapter is entitled to retired pay computed under chapter 371 of this title.]

CHAPTER 367—RETIREMENT FOR LENGTH OF SERVICE

Sec.
3911. Twenty years or more: regular or reserve commissioned officers.

[3913. Twenty years or more: deferred officers not recommended for promotion.]
3914. Twenty to thirty years: enlisted members.
[3916. Twenty-eight years: promotion-list lieutenant colonels.]
3917. Thirty years or more: regular enlisted members.
3918. Thirty years or more: regular commissioned officers.
[3919. Thirty years or more: regular commissioned officers; excessive number.]
3920. More than thirty years: permanent professors of United States Military Academy.
[3921. Thirty years or five years in grade: promotion-list colonels.]
3922. Thirty years or five years in grade: regular brigadier generals.
[3923. Thirty-five years or five years in grade: regular major generals.]
3924. Forty years or more: Army officers.
3925. Computation of years of service: voluntary retirement; enlisted members.
3926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers.
[3927. Computation of years of service: mandatory retirement; regular commissioned officers.]
3929. Computation of retired pay: law applicable.

* * * * * * *

[§ 3913. Twenty years or more: deferred officers not recommended for promotion

[(a) A deferred officer who is not recommended for promotion under section 3303(c) of this title, or an officer who is found disqualified for promotion under section 3302(f) of this title, shall, if he has at least 20 years of service computed under section 3927(a) of this title, be retired, except as provided by section 8301 of titie 5, on such date as may be requested by him and approved under regulations to be prescribed by the Seceraty of the Army, but not later than the first day of the seventh calendar month after the Secretary approves the report of the last board that did not recommend him for promotion to the grade concerned.

[(b) Unless sooner retired or separated under another provision of law, a deferred officer who is not recommended for promotion under section 3303(c) of this title, or an officer found disqualified for promotion under section 3302(f) of this title, who is not eligible for retirement under subsection (a) of this section or any other provision of law, but is within two years of becoming entitled to retirement under subsection (a) or some other provision of law, shall be retained on the active list in his regular grade until the date he completes 20 years of service computed under section 3927(a) of this title, or the first day of the seventh calendar month after the Secretary approves the report of the last board that did not recommend him for promotion to the grade concerned, whichever is later, and then retired.]

* * * * * * *

[§ 3916. Twenty-eight years: promotion-list lieutenant colonels

[(a) Unless retired or separated at an earlier date, each promotion-list officer in the regular grade of lieutenant colonel shall be retired, except as provided by section 8301 of title 5, on the thirtieth day after he completes 28 years of service computed under section 3927(a) of this title. However, if his name is carried on the list of officers recommended for appointment to the regular grade of colonel, he shall be retained on the active list while his name is so carried.

[(b) The Secretary of the Army may defer the retirement under this section of—

[(1) any promotion-list officer in the regular grade of lieutenant colonel in the Medical Corps, Dental Corps, Veterinary Corps, Medical Service Corps, or the Chaplains, but not later than the date on which he becomes 60 years of age; and

[(2) any officer in the grade of lieutenant colonel in the Women's Army Corps, Army Nurse Corps, or Army Medical Specialist Corps, Regular Army, until the thirtieth day after she completes 30 years of service computed under section 3927(a) of this title.]

* * * * * * *

[§ 3919. Thirty years or more: regular commissioned officers; excessive number

[Whenever the Secretary of the Army believes that there are too many commissioned officers on the active list of the Regular Army, in any grade, who have at least 30 years of service computed under section 3927(a) of this title, he may convene a board of at least five general officers of the Regular Army. The board shall consider all officers on the active list in that grade and with that service, and shall recommend officers by name for retirement, in the number specified by the Secretary. The Secretary may retire an officer so recommended.]

* * * * * * *

[§ 3921. Thirty years or five years in grade: promotion-list colonels

[(a) Unless retired or separated at an earlier date, each promotion-list officer in the regular grade of colonel shall be retired, except as provided by section 8301 of title 5, on the fifth anniversary of the date of his appointment in that regular grade, or on the thirtieth day after he completes 30 years of service computed under section 3927(a) of this title, whichever is later. However, if his name is carried on the list of officers recommended for appointment to the regular grade of brigadier general, he shall be retained on the active list while his name is so carried.

[(b) The Secretary of the Army may defer the retirement under this section of any promotion-list officer in the regular grade of colonel in the Medical Corps, Dental Corps, Veterinary Corps, Medical Service Corps, or the Chaplains, but not later than the date on which he becomes 60 years of age. The number of deferments in effect under this subsection for any one promotion-list at any one time may not be more than 10 percent of the number of colonels authorized for that list.

* * * * * * *

[§ 3922. Thirty years or five years in grade: regular brigadier generals

[(a) Unless retired or separated at an earlier date, each officer in the regular grade of brigadier general, other than a professor of the United States Military Academy, shall be retired, except as provided by section 8301 of title 5, on the fifth anniversary of the date of his appointment in that regular grade, or on the thirtieth day after he completes 30 years of service computed under section 3927(a) of this title, whichever is later. However, if his name is carried on the list of officers recommended for appointment to the regular grade of major general, he shall be retained on the active list while his name is so carried.

[(b) The Secretary of the Army may defer the retirement under this section of any brigadier general who is serving in a higher temporary grade, but not later than the date on which he becomes 60 years of age. Not more than five deferments under this subsection may be in effect at any one time.

[§3923. Thirty-five years or five years in grade: regular major generals

[Unless retired or separated at an earlier date, each officer in the regular grade of major general shall be retired, except as provided by section 8301 of title 5, on the fifth anniversary of the date of his appointment in that regular grade, or on the thirtieth day after he completes 35 years of service computed under section 3927(a) of this title, whichever is later. However, the Secretary of the Army may defer the retirement under this section of—

[(1) any such major general, but not later than the date on which he becomes 60 years of age; and

[(2) any such major general who is serving in a temporary grade above major general, or who is serving in a position that carries a grade above major general, but not later than the date on which he becomes 64 years of age; and not more than five deferments under this clause may be in effect at any one time.]

§3924. Forty years or more: Army officers

(a) Except as provided in section [3786] *1186* of this title, a commissioned officer of the Army who has at least 40 years of service computed under section 3926 of this title shall be retired upon his request.

(b) Any warrant officer of the Army who has at least 40 years of service computed under section 3926(a) of this title shall be retired upon his request.

* * * * * * *

[§3927. Computation of years of service: mandatory retirement; regular commissioned officers

[(a) For the purpose of determining whether a regular commissioned officer may be retired under section 3913, 3915, 3916, 3919, 3921, 3922, or 3923 of this title, his years of service are the greater of—

[(1) the years of service credited to him at the time of his original appointment in the Regular Army to determine his eligibility for promotion, except the constructive service credited to him under section 3287(a)(2)(A) or (B) or 3294(b) of this title or under section 506(c) of the Officer Personnel Act of 1947 (61 Stat. 890), plus his years of active commissioned service in the Regular Army after that appointment; or

[(2) his years of service computed under clause (A), (B), or (C), whichever applies, if any:

[(A) For a reserve judge advocate appointed in the Regular Army in the grade of captain in the Judge Advocate General's Department under section 24e of the National Defense Act, as amended (53 Stat. 558)—

[(i) his years of active commissioned service in the Army after becoming 21 years of age, after December 7, 1941, and before the date of that appointment; or

[(ii) the number of days, months, and years by which his age at the time of the appointment exceeded 25 years;

whichever is greater, plus his years of active commissioned service in the Regular Army after that appointment.

[(B) For an officer appointed in the Regular Army, except in the Army Nurse Corps or Army Medical Specialist Corps, before December 31, 1947, other than an officer covered by clause (A) or appointed under the Act of December 28, 1945, ch. 601 (59 Stat. 663), the sum of—

[(i) his years of active commissioned service in the Regular Army after that appointment; and

[(ii) his years of active commissioned service in the Army after becoming 21 years of age and after December 7, 1941, under any earlier appointment.

[(C) For an officer appointed in the Regular Army, except in the Army Nurse Corps or Army Medical Specialist Corps, after December 31, 1947, other than an officer appointed in the Women's Army Corps, Regular Army, under section 108 of the Women's Armed Services Integration Act of 1948 (62 Stat. 361), the sum of—

[(i) his years of active commissioned service in the Regular Army after that appointment; and

[(ii) his years of active commissioned service in the Army after becoming 21 years of age and after December 31, 1947, under any earlier appointment.

[(b) For the purpose of computing the retired pay of a commissioned officer of the Regular Army retired under section 3913, 3915, 3916, 3919, 3921, 3922, or 3923 of this title, his years of service are the greater of—

[(1) the years of service that may be credited to him under section 1405 of this title; or

[(2) his years of service computed under subsection (a).]

* * * * * * *

CHAPTER 369—RETIRED GRADE

Sec.
3961. General rule.
3962. Higher grade for service in special positions.
3963. Higher grade for service during certain periods: regular and reserve commissioned officers.
3964. Higher grade after 30 years of service: Army warrant officers; regular enlisted members.
3965. Restoration to former grade: regular warrant officers and enlisted members.
3966. Retired lists.

* * * * * * *

§ 3961. General rule

[Unless entitled to a higher retired grade under some other provision of law, a Regular or Reserve of the Army who retires other than for physical disability retires in the regular or reserve grade that he holds on the date of his retirement.]

(a) Unless entitled to a higher retired grade under some other provision of law, a regular commissioned officer of the Army who retires other than for physical disability, and a reserve commissioned officer of the Army who retires other than for physical disability or for nonregular service under chapter 67 of this title, retires in the grade determined under section 1370 of this title.

(b) Unless entitled to a higher retired grade under some other provision of law, a Regular or Reserve of the Army not covered by subsection (a) who retires other than for physical disability retires in the grade that he holds on the date of his retirement.

§ 3962. Higher grade for service in special positions

(a) Upon retirement, a commissioned officer of the Army who has served (1) as Chief of Staff to the President, (2) as Chief of Staff of the Army, (3) as a senior member of the Military Staff Committee of the United Nations, [(4) in a position of importance and responsibility designated by the President to carry the grade of general or lieutenant general under section 3066 of this title, or (5)] *or (4)* as Surgeon General of the Army in the grade of lieutenant general may, in the discretion of the President, be retired, by and with the advice and consent of the Senate, in the highest grade in which he served on active duty.

[(b) Upon retirement, a commissioned officer of the Regular Army who has served at least four years as chief or assistant chief of a branch is entitled to retire in the highest grade, prescribed for such an office, that he held while so serving.]

[(c)] *(b)* Upon retirement, any permanent professor of the United States Military Academy whose grade is below brigadier general, and whose service as such a professor has been long and distinguished, may, in the discretion of the President, be retired in the grade of brigadier general.

§ 3963. Higher grade for service during certain periods: regular and reserve commissioned officers

[(a) A regular commissioned officer who is retired, or a reserve commissioned officer who is retired or to whom retired pay is granted, is entitled to a retired grade equal to the highest temporary grade in the Army in which he served on active duty satisfactorily, as determined by the Secretary of the Army, for not less than six months.]

[(b)] Upon retirement, a member of the Regular Army in the Army Nurse Corps or Army Medical Specialist Corps who was (1) a member of the Army Nurse Corps established by the Act of July 9, 1918, ch. 143 (40 Stat. 879), (2) a female dietitian or physical therapist appointed under the Act of December 22, 1942, ch. 805 (56 Stat. 1072), or (3) a female officer appointed under the Act of June 22, 1944, ch. 272 (58 Stat. 324), is entitled to a retired grade equal to the highest grade or relative rank in which she served on active duty satisfactorily, as determined by the Secretary, after September 8, 1940, and before July 1, 1946.

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CHAPTER 371—COMPUTATION OF RETIRED PAY

Sec.
3991. Computation of retired pay.
3992. Recomputation of retired pay to reflect advancement on retired list.

§ 3991. Computation of retired pay

The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed "For sections", retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, 3, and 4, as modified by the applicable footnotes. However, if a person would otherwise be entitled to retired pay computed under more than one pay formula of this table or the table in section 1401 of this title, he is entitled to be paid under the applicable formula that is most favorable to him. Section references below are to sections of this title.

Formula	For sections	Column 1	Column 2	Column 3	Column 4
		For a person who first became a member of uniformed service (as defined in section 1407(a)(2) of this title) [on or after the date of the enactment of the Department of Defense Authorization Act, 1981] *after September 7, 1980,* take the monthly retired pay base as computed under section 1407(c). For all others, take	Multiply by	Add	Subtract
[A	[3883 [3884 [3885 [3886 [3913 [3915 [3916 [3919 [3921 [3922 [3923	[Monthly basic pay [2] of member's retired grade [1]	[2½% of years of service credited to him under section 3888 or 3927(b) whichever is applicable.[4]	[Amount necessary to increase product of columns 1 and 2 to 50% of pay upon which computation is based	[Excess over 75% of pay upon which computation is based.]
[B] *A*	3911 3918 3920 3924	Monthly basic pay [2] of member's retired grade.[1]	2½% of years of service credited to him under section 1405 of this title.[4]		Excess over 75% of pay upon which computation is based.
[C] *B*	3914	Monthly basic pay [3] to which member was entitled on day before he retired	2½% of years of service credited to him under section 3925.[4]	10% of product of columns 1 and 2 for extaordinary heroism in line of duty.[5]	Excess over 75% of pay upon which computation is based.
[D] *C*	3917	Monthly basic pay [3] to which member was entitled on day before he retired	2½% of years of service credited to him under section 3925.[4]		Excess over 75% of pay upon which computation is based.

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[1] For the purposes of this section, determine member's retired grade as if section [3962(c)] *3962(b)* did not apply and, for an officer who has served as Chief of Staff, compute at the highest rates of basic pay applicable to him while he served in that office.

[2] Compute at rates applicable on date of retirement.

[3] Compute at rates applicable on date of retirement, or if the member has served as sergeant major of the Army, compute at the highest basic pay applicable to him while he so served, if such basic pay is greater.

[4] Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months.

[5] The Secretary of the Army's determination as to extraordinary heroism is conclusive for all purposes.

§ 3992. Recomputation of retired pay to reflect advancement on retired list

A member of the Army who is advanced on the retired list under section 3964 of this title is entitled to recompute his retired pay as follows:

Column 1	Column 2	Column 3	Column 4
For a person who first became a member of uniformed service (as defined in section 1407(a)(2) of this title) [on or after the date of the enactment of the Department of Defense Authorization Act, 1981] *after September 7, 1980,* take the monthly retired pay base as computed under section 1407(c). For all others, take	Multiply by	Add	Subtract
Monthly basic pay or base and longevity pay, as the case may be,[1] of grade to which member is advanced on retired list	2½% of years of service credited to him under section 3925 of this title [2]		Excess over 75% pay upon which computation is based

[1] Compute at rates applicable on date of retirement.

[2] Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months.

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PART III—TRAINING

Chap.		Sec.
401.	Training Generally	4301
403.	United States Military Academy	4331
407.	Schools and Camps	4411

CHAPTER 401—TRAINING GENERALLY

* * * * * * *

§ 4301. Members of Army: detailed as students, observers, and investigators at educational institutions, industrial plants, and hospitals

(a) The Secretary of the Army may detail members of the Army as students at such technical, professional, and other civilian educational institutions, or as students, observers, or investigators at such industrial plants, hospitals, and other places, as are best suited to enable them to acquire knowledge or experience in the specialties in which it is considered necessary that they perfect themselves.

(b) An officer, other than one of the Regular Army on the [active list], *active-duty list* who is detailed under subsection (a) shall be ordered to additional active duty immediately upon termination of the detail, for a period at least as long as the detail. However, if the detail is for 90 days or less, the officer may be ordered to that additional duty only with his consent and in the discretion of the Secretary.

* * * * * * *

§ 4314. United States Army Command and General Staff College degree

Under regulations prescribed by the Secretary of the Army, and with the approval of a nationally recognized civilian accrediting association approved by the [Commissioner of Education, Department of Health, Education, and Welfare] *Secretary of Education* the Commandant of the United States Army Command and General Staff College may upon recommendation by the faculty confer the degree of master of military art and science upon graduates of the college who have fulfilled the following degree requirements: a minimum of thirty semester hours of graduate credit, including a masters thesis of six to eight semester hours, and a demonstration of competence in the discipline of military art and science as evidenced by satisfactory performance on a general comprehensive examination. These requirements may be altered only with the approval of such association. The Secretary of the Army shall report annually to the Committees on Armed Services of the Senate and House of Representatives the following information: (1) the criteria which must be met to entitle a student to award of the degree, (2) whether such criteria have changed in any respect during the reporting year, (3) the number of students in the most recent resident course graduating class, (4) the number of such students who were enrolled in the master of military art and science program, and (5) the number of students successfully completing the master of military art and science program.

CHAPTER 403—UNITED STATES MILITARY ACADEMY

* * * * * * *

§ 4331. Superintendent; faculty; adjutant; chaplain

(a) There shall be at the United States Military Academy, at West Point, [New York, in this chapter called the "Academy"] *New York (hereinafter in this chapter referred to as the "Academy"),* the following—

* * * * * * *

§ 4333. Superintendent; faculty: appointment and detail

(a) * * *

* * * * * * *

(d) Any officer of the Regular Army in a [regular or temporary] grade above captain may be detailed to perform the duties of director of admissions without being appointed as director of admissions. Such a detail does not affect his position on the [applicable promotion list] *active-duty list.*

* * * * * * *

§ 4336. Permanent professors; director of admissions

(a) A permanent professor of the Academy, other than the Dean of the Academic Board, who is the head of a department of instruction, or who has served as such a professor for more than six years, has the grade of colonel. However, a permanent professor appointed from the Regular Army has the grade of colonel after the date when he completes six years of service as a professor, or after the date when a [promotion-list] *regular* officer, junior to him on the promotion list *or active-duty list* on which his name was carried before his appointment as a professor, is promoted to the regular grade of colonel, whichever is earlier. All other permanent professors have the grade of lieutenant colonel.

(b) A person appointed as director of admissions of the Academy has the regular grade of lieutenant colonel, and, after he has served six years as director of admissions, has the regular grade of colonel. However, a person appointed from the Regular Army has the regular grade of colonel after the date when he completes six years of service as director of admissions, or after the date when a [promotion-list] *regular* officer, junior to him on the promotion list *or active-duty list* on which his name was carried before his appointment as director of admissions, is promoted to the regular grade of colonel, whichever is earlier.

[(c) Unless he is serving in a higher grade, an officer detailed to perform the duties of director of admissions has, while performing those duties, the temporary grade of lieutenant colonel and, after performing those duties for a period of six years, has the temporary grade of colonel.]

* * * * * * *

§ 4342. Cadets: appointments; numbers, territorial distribution

(a) * * *

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(h) [Effective beginning with nominations for appointment to the Academy in the calendar year 1964, the] *The* Secretary of the Army shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy.

* * * * * * *

§ 4353. Cadets: degree and commission on graduation

(a) Under such conditions as the Secretary of the Army may prescribe, the Superintendent of the Academy may confer the degree of bachelor of science upon graduates of the Academy.

(b) Notwithstanding any other provision of law, a cadet who completes the prescribed course of instruction may, upon graduation, be appointed a second lieutenant in the Regular Army *under section 531 of this title*.

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PART IV—SERVICE, SUPPLY, AND PROCUREMENT

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CHAPTER 433—PROCUREMENT

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§ 4537. Military surveys and maps: assistance of United States mapping agencies

The Secretary of the Army may obtain the assistance of the United States Geological Survey, the [Environmental Science Services Administration] *National Oceanic and Atmospheric Administration*, and other mapping agencies of the United States in—

(1) making topographic and other surveys;

(2) obtaining extra topographic data;

* * * * * * *

§ 4858. Unserviceable ammunition: exchange and reclamation

(a) * * *

(b) Subject to applicable regulations under section [486 of title 40] *205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)*, the Secretary may exchange deteriorated and unserviceable ammunition and components thereof for serviceable ammunition or components.

§ 4540. Architectural and engineering services

(a) * * *

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(c) Sections 305, 3324, [5101-5115, 5331-5338, 5341, 5342, and 7204 of title 5 and subchapter VI of chapter 53 of such title 5] *and 7204, chapter 51, and subchapters III and IV; and VI of chapter 53 of title 5* do not apply to employment under this section.

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CHAPTER 439—SALE OF SERVICEABLE MATERIAL

Sec.

4621. Quartermaster supplies: members of armed forces; veterans; executive or military departments and employees; prices.
4622. Rations: commissioned officers in field.
4624. Medical supplies: civilian employees of *the* Army; American National Red Cross; Soldiers *and Airmen's* Home.
4625. Ordnance property: officers of armed forces; civilian employees of Army; American National Red Cross; educational institutions; homes for veterans' orphans.
4626. Aircraft supplies and services: foreign military or air attaché.
4627. Supplies: educational institutions.
4628. Airplane parts and accessories: civilian flying schools.
4629. Proceeds: disposition.

§ 4621. Quartermaster supplies: members of armed forces; veterans; executive or military departments and employees; prices

(a) * * *

* * * * * * *

(f) Under such conditions as the Secretary may prescribe, exterior articles of uniform may be sold to a person who has been discharged from the Army honorably or under honorable conditions, at the prices at which like articles are sold to members of the Army. This subsection does not modify [sections 772, 773, or 3612] *section 772 or 773* of this title.

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§ 1624. Medical supplies: civilian employees of *the* Army; American National Red Cross; Soldiers' *and Airmen's* Home

(a) * * *

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(c) Any branch, office, or officer designated by the Secretary may sell medical and hospital supplies to the *United States* Soldiers' *and Airmen's* Home.

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CHAPTER 443—DISPOSAL OF OBSOLETE OR SURPLUS MATERIAL

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§ 4681. Surplus war material: sale to States and foreign governments

Subject to regulations under section [486 of title 40] *205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)*, the Secretary of the Army may sell surplus war material and supplies, except food, of the Department of the Army, for which there is no adequate domestic market, to any State or to any foreign government with which the United States was at peace on June 5, 1920. Sales under this section shall be made upon terms that the Secretary considers expedient.

§ 4682. Obsolete or excess material: sale to National Council of Boy Scouts of America

Subject to regulations under section [486 of title 40] *205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)*, the Secretary of the Army, under such conditions as he may prescribe, may sell obsolete or excess material to the National Council of the Boy Scouts of America. Sales under this section shall be at fair value to the Department of the Army, including packing, handling, and transportation.

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§ 4684. Surplus obsolete ordnance: sale to patriotic organizations

Subject to regulations under section [486 of title 40] *205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)*, any branch, office, or officer designated by the Secretary of the Army may sell, without advertisement and at prices that he considers reasonable—

(1) surplus obsolete small arms and ammunition and equipment for them, to any patriotic organization for military purposes; and

(2) surplus obsolete brass or bronze cannons, carriages, and cannon balls, for public parks, public buildings, and soldiers' monuments.

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§ 1686. Obsolete ordnance: gift to State homes for soldiers and sailors

Subject to regulations under section [486 of title 40] *205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)*, the Secretary of the Army may give not more than two obsolete bronze or iron cannons suitable for firing salutes to any home for soldiers or sailors established and maintained under State authority.

CHAPTER 445—INQUESTS: DISPOSITION OF EFFECTS OF DECEASED PERSONS; CAPTURED FLAGS

Sec.
4711. Inquests.
4712. Disposition of effects of deceased persons by summary court-martial.
4713. Disposition of effects of deceased persons by Soldiers' *and Airmen's* Home.
4714. Collection of captured flags, standards, and colors.

* * * * * * *

§ 4712. Disposition of effects of deceased persons by summary court-marital

(a) Upon the death of—

(1) a person subject to military law at a place or command under the jurisdiction of the Army; or

(2) an inmate of the *United States* Soldiers' *and Airmen's* Home who dies in an Army hospital outside the District of Columbia when sent from the Home to that hospital for treatment;

the commanding officer of the place or command shall permit the legal representative or the surviving spouse of the deceased, if present, to take possession of the effects of the deceased that are then at the air base or in quarters.

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(f) As soon as practicable after the effects have been converted into cash under subsection (e), the summary court-martial shall deposit all cash in the court's possession and belonging to the estate with the officer designated in regulations, and shall send a receipt therefor, together with any will or other papers of value, an inventory of the effects and articles not permitted to be sold, to the executive part of the Department of the Air Force for transmission to the *United States* Soldiers' *and Airmen's* Home.

(g) The summary court-martial shall make a full report of the transactions under this section, with respect to the deceased, to the Department of the Army for transmission to the General Accounting Office for action authorized in the settlement of accounts of deceased members of the Army.

§ 4713. Disposition of effects of deceased persons by Soldiers' *and Airmen's* Home

(a) The effects of a deceased person that the Department of the Army receives under section 4712(f) of this title shall be delivered to the [Soldiers' Home] *United States Soldiers' and Airmen's Home*. The Home shall dispose of the effects as follows:

(1) * * *

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CHAPTER 447—TRANSPORTATION

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§ 4745. Civilian passengers and commercial cargoes: transports in trans-Atlantic service

(a) Whenever space is unavailable on commercial lines and is available (1) on vessels operated by Army transport agencies, or (2) within bulk space allocations made to the Department of the Army on vessels operated by any transport agency of the Department of Defense, civilian passengers and commercial cargo may, in the discretion of the Secretary of the Army and the **[**chairman of the Federal Maritime Board**]** *Secretary of Commerce* be transported on those vessels. Rates for transportation under this section may not be less than those charged by commercial lines for the same kinds of service.

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CHAPTER 449—REAL PROPERTY

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4778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association.
4779. Use of public property.
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§ 4777. Permits: military [reservation] *reservations*; landing ferries, erecting bridges, driving livestock

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4838. Settlement of accounts: affidavit of company commander.
4839. Settlement of accounts: oaths.
4840. Final settlement of officer's accounts.

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§ 4837. Settlement of accounts: [deductions from pay] *remission or cancellation of indebtedness of enlisted members*

[(d)] If he considers it in the best interest of the United States, the Secretary may have remitted or cancelled any part of an enlisted member's indebtedness to the United States or any of its instrumentalities remaining unpaid before, or at the time of, that member's honorable discharge.

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Subtitle C—Navy and Marine Corps

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CHAPTER 501—DEFINITIONS

Sec.
5001. Definitions.

§ 5001. Definitions

(a) In this subtitle:

(1) * * *

* * * * * * *

(3) "Member of the naval service" means a person[, male or female,] appointed or enlisted in, or inducted or conscripted into, the Navy or the Marine Corps.

* * * * * * *

[(9) "Active list of the Navy" means the list of officers of the Regular Navy, other than retired officers, holding permanent appointments in grades above chief warrant officer, W-4.

[(10) "Active list of the Marine Corps" means the list of officers of the Regular Marine Corps, other than retired officers, holding permanent appointments in grades above chief warrant officer, W-4.]

(b) For the purposes of this subtitle, a member of the naval service who holds a temporary appointment in a grade higher than his permanent grade is considered, unless otherwise specified, to be serving in the higher grade.

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CHAPTER 505—SECRETARY, UNDER SECRETARY, AND ASSISTANT SECRETARIES OF THE NAVY

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§ 5032. Secretary of the Navy: powers with respect to Coast Guard

(a) Whenever the Coast Guard operates as a service in the Navy under section 3 of title 14, the Secretary of the Navy has the same powers and duties with respect to the Coast Guard as the Secretary of [the Treasury] *Transportation* has when the Coast Guard is not so operating.

(b) While operating as a service in the Navy, the Coast Guard is subject to the orders of the Secretary of the Navy, who may order changes in Coast Guard operations to make them uniform, to the extent he considers advisable, with Navy operations.

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§ 5036. Secretary of the Navy: succession to duties

(a) * * *

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(c) Performance of the duties of the Secretary by the Chief of Naval Operations, the Vice Chief of Naval Operations, or any officer of the Navy or Marine Corps designated under section [6] *3347* of title 5 shall not be considered as the holding of a civil office within the meaning of section 973(b) of this title.

CHAPTER 507—OFFICE OF THE COMPTROLLER OF THE NAVY

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5061. Comptroller of the Navy: appointment; functions.
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5063. Office of Budget and Reports: duties.
5064. Office of Budget and Reports: Director; Assistant *Director*.

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§ 5064. Office of the Budget and Reports: Director; Assistant Director

(a) The Director of Budget and Reports is the head of the Office of Budget and Reports. He shall be appointed by the President, by and with the advice and consent of the Senate, for a term of three years, from officers on the [active list] *active-duty list* in the line of the Navy not below the grade of lieutenant commander.

[(b) The Director is entitled to the same rank and privileges of retirement as provided for chiefs of bureaus in section 5133 of this title.]

[(c)] *(b)* An officer in the line of the Navy may be detailed as Assistant Director of Budget and Reports.

[(d)] *(c)* When there is a vacancy in the office of Director, or during the absence or disability of the Director, the Assistant Director, unless otherwise directed by the President, shall perform the duties of the Director until a successor is appointed or the absence or disability ceases.

CHAPTER 509—OFFICE OF THE CHIEF OF NAVAL OPERATIONS

* * * * * * *

§5081. Chief of Naval Operations: appointment; term of office; powers; duties

(a) There is a Chief of Naval Operations, appointed by the President, by and with the advice and consent of the Senate, to serve at the pleasure of the President, for a term of four years, from officers on the [active list] *active-duty list* in the line of the Navy, eligible to command at sea and not below the grade of rear admiral. In time of war or national emergency declared by the Congress after December 31, 1968, he may be reappointed for a term of not more than four years.

* * * * * * *

§5085. Vice Chief of Naval Operations: appointment; powers; duties

(a) There is a Vice Chief of Naval Operations, appointed by the President, by and with the advice and consent of the Senate, from officers on the [active list] *active-duty list* in the line of the Navy serving in grades above captain and eligible to command at sea.

* * * * * * *

[(d) The President may designate the Vice Chief of Naval Operations as an officer who performs special or unusual duty or duty of great importance and responsibility under section 5231 of this title.]

§5086. Deputy Chiefs of Naval Operations: detail; duties

(a) There are in the Office of the Chief of Naval Operations not more than six Deputy Chiefs of Naval Operations, detailed by the Secretary of the Navy from officers on the [active list] *active-duty list* in the line of the Navy serving in grades above captain.

(b) The Deputy Chiefs of Naval Operations are charged, under the direction of the Chief of Naval Operations with the execution of the functions of their respective divisions. Orders issued by the Deputy Chiefs of Naval Operations in performing the duties assigned them are considered as coming from the Chief of Naval Operations.

[(c) The President may designate any Deputy Chief of Naval Operations as an officer who performs special or unusual duty or duty of great importance and responsibility under section 5231 of this title.]

§5087. Assistant Chiefs of Naval Operations: detail; duties

(a) Officers on the [active list] *active-duty list* in the line of the Navy and officers on the [active list] *active-duty list* of the Marine Corps, in numbers considered by the Chief of Naval Operations to be necessary, shall with the approval of the Secretary of the Navy, be detailed as Assistant Chiefs of Naval Operations.

(b) The Assistant Chiefs of Naval Operations shall perform such duties as the Chief of Naval Operations prescribes.

§ 5088. Naval Inspector General: detail; duties

(a) There is in the Office of the Chief of Naval Operations the Office of the Naval Inspector General. The Naval Inspector General shall be detailed from officers on the [active list] *active-duty list* in the line of the Navy serving in grades above captain.

(b) The Naval Inspector General, when directed, shall inquire into and report upon any matter that affects the discipline or military efficiency of the Department of the Navy. He shall make such inspections, investigations, and reports as the Secretary of the Navy or the Chief of Naval Operations directs.

(c) The Naval Inspector General shall periodically propose programs of inspections to the Chief of Naval Operations and shall recommend additional inspections and investigations as may appear appropriate.

[(d) The President may designate the Naval Inspector General as an officer who performs special or unusual duty or duty of great importance and responsibility under section 5231 of this title.]

CHAPTER 513—BUREAUS; OFFICE OF THE JUDGE ADVOCATE GENERAL; OFFICE OF NAVAL RESEARCH

Sec.

5131. Bureaus: names; location.
5132. Bureaus: distribution of business; orders; records; expenses.
5133. Bureau Chiefs and Judge Advocate General: rank; pay and allowances; retirement.
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5135. Bureau Chiefs: succession to duties.
5137. Bureau of Medicine and Surgery: Chief; Deputy Chief.
5138. Bureau of Medicine and Surgery: Dental Division; Chief; functions.
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5142a. Deputy Chief of Chaplains.
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5148. Judge Advocate General's Corps: Office of the Judge Advocate General; Judge Advocate General; appointment, term, emoluments, duties.
5149. Office of the Judge Advocate General: Deputy Judge Advocate General; Assistant Judge Advocates General.
5150. Office of Naval Research: Chief, appointment, term emoluments; Assistant Chief; succession to duties
5151. Office of Naval Research: duties.
5152. Office of Naval Research: appropriations; time limit.
5153. Naval Research Advisory Committee.
5155. Staff Corps of the Navy.

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§ 5133. Bureau Chiefs and Judge Advocate General: rank; pay and allowances; retirement

(a) Unless appointed to a higher grade under another provision of law, an officer of the Navy, while serving as a chief of bureau or the Judge Advocate General, has the rank of rear admiral. Unless appointed to a higher grade under another provision of law, an officer of the Marine Corps, while serving as Judge Advocate General, has the rank of major general.

(b) Except for an officer who is serving or has served in the grade of vice admiral under section 5137(a) of this title, an officer who is retired while serving as a chief of bureau or the Judge Advocate General, or who, after serving at least two and one-half years as chief of bureau or the Judge Advocate General, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the grade of rear admiral or major general, as appropriate, and with retired pay based on that grade. [If he is retired with the grade of rear admiral, he is entitled to the retired pay of a rear admiral in the upper half of that grade.] An officer who is serving or has served in the grade of vice admiral under section 5137(a) of this title may, upon retirement, be appointed by the President, by and with the advice and consent of the Senate, to the highest grade held by him while on the active list *or active-duty list* and with retired pay based on that grade.

(c) Except in time of war, any officer of a staff corps who has served as a chief of bureau for a full term is exempt from sea duty.

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§ 5137. Bureau of Medicine and Surgery: Chief; Deputy Chief

(a) The Chief of the Bureau of Medicine and Surgery shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years, from officers on the [active list] *active-duty list* of the Navy in the Medical Corps. He has the title of Surgeon General. The Surgeon General, while so serving has the grade of vice admiral.

(b) An officer on the active list of the Navy in the Medical Corps will be detailed as Deputy Chief of the Bureau of Medicine and Surgery.

§ 5138. Bureau of Medicine and Surgery: Dental Division; Chief; functions

(a) There is a Dental Division in the Bureau of Medicine and Surgery. An officer of the Dental Corps [in the grade of rear admiral] *not below the grade of commodore admiral* shall be detailed as Chief of the Dental Division.

(b) The Chief of the Dental Division is entitled to the same privileges of retirement as provided for chiefs of bureaus in section 5133 of this title.

(c) The dental functions of the Bureau of Medicine and Surgery shall be so defined and prescribed by Bureau directives, and if necessary by regulations of the Secretary of the Navy, that all such functions will be under the direction of the Dental Division. All matters relating to dentistry shall be referred to that Division.

(d) The Dental Division shall—

(1) establish professional standards and policies for dental practice;

(2) conduct inspections and surveys for maintenance of such standards;

(3) initiate and recommend action pertaining to complements, appointments, advancement, training assignment, and transfer of dental personnel; and

(4) serve as the advisory agency for the Bureau on all matters relating directly to dentistry.

§5139. Bureau of Medicine and Surgery: Medical Service Corps, Chief

[(a) There is a chief of the Medical Service Corps appointed by the Secretary of the Navy, upon the recommendation of the Surgeon General, from officers on the active list of the Navy in the Medical Service Corps holding permanent appointments in grades not below lieutenant commander. The Chief shall be appointed for a term of not more than four years, to serve at the pleasure of the Secretary. While so serving, he has the rank of captain in the Navy. His permanent status as a commissioned officer in the Medical Service Corps is not disturbed by his appointment as Chief.

[(b) An officer who is retired for any reason while serving as Chief of the Medical Service Corps or who, after serving at least two and one-half years as chief of that corps, is retired after completion of that service while serving in a lower rank or grade may, in the discretion of the President, be retired with the grade of captain and with retired pay based on that grade.

§5140. Bureau of Medicine and Surgery: Nurse Corps, Director

[(a) There is a Director of the Nurse Corps appointed by the Secretary of the Navy, upon the recommendation of the Surgeon General, from officers on the active list of the Navy in the Nurse Corps holding permanent appointments in the grade of lieutenant commander or above. The Director shall be appointed for a term of not more than four years, to serve at the pleasure of the Secretary. An officer of the Navy, while serving as Director of the Nurse Corps, has the rank of captain unless otherwise entitled to a higher rank or grade. An appointment as director does not disturb an officer's permanent status as a commissioned officer in the Nurse Corps.

[(b) An officer who, after serving at least two and one-half years as Director of the Nurse Corps, is retired for any reason while serving as Director or while serving in a lower rank or grade after completion of that service may, in the discretion of the President, be retired with the grade of captain and with retired pay based on that grade.]

§5141. Bureau of Naval Personnel: Chief of Naval Personnel; Deputy Chief of Naval Personnel

(a) The Chief of the Bureau of Naval Personnel shall be known as the Chief of Naval Personnel. The Chief of Naval Personnel shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years, from officers on the [active list] *active-duty list* in the line of the Navy not below the grade of commander.

(b) The Deputy Chief of the Bureau of Naval Personnel shall be known as the Deputy Chief of Naval Personnel. An officer on the [active list] *active-duty list* in the line of the Navy not below the grade of commander may be detailed as Deputy Chief of Naval Personnel.

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§5143. Bureau of Naval Personnel: Assistant Chief for Women

[(a) A woman officer on the active list of the Navy, appointed under section 5590 of this title, serving in a grade not below lieutenant commander may be detailed as an assistant to the Chief of Naval Personnel. While so serving, she has the rank of captain in the Navy unless otherwise entitled to a higher rank or grade. Her permanent status as a commissioned officer is not disturbed by her detail under this section.

[(b) An officer detailed as an assistant to the Chief of Naval Personnel under subsection (a) who has served at least two and one-half years as such assistant, and who is retired for any reason, either while so serving or after completion of that service while serving in a lower grade or rank, may, in the discretion of the President, be retired with the grade of captain and with retired pay based on that grade.]

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§5148. Judge Advocate General's Coprs: Office of the Judge Advocate General; Judge Advocate General; appointment, term, emoluments, duties

(a) The Judge Advocate General's Corps is a Staff Corps of the Navy, and shall be organized in accordance with regulations prescribed by the Secretary of the Navy.

(b) There is in the executive part of the Department of the Navy the Office of the Judge Advocate General of the Navy. The Judge Advocate General shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. He shall be appointed from judge advocates of the Navy or the Marine Corps who are members of the bar of a Federal court or the highest court of a State or Territory and who have had at least eight years of experience in legal duties as commissioned officers. *While so serving, the Judge Advocate General of the Navy shall be entitled to the rank and grade for rear admiral or major general, as appropriate, unless entitled to a higher rank and grade under another provision of law.*

(c) The Judge Advocate General of the Navy is entitled to the same rank and privileges of retirement as provided for chiefs of bureaus in section 5133 of this title.

(d) The Judge Advocate General of the Navy, under the direction of the Secretary of the Navy, shall—

(1) perform duties relating to legal matters arising in the Department of the Navy as may be assigned to him;

(2) perform the function and duties and exercise the powers prescribed for the Judge Advocate General in chapter 47 of this title;

(3) receive, revise, and have recorded the proceedings of boards for the examination of officers of the naval service for promotion and retirement; and

(4) perform such other duties as may be assigned to him.

§5149. Office of the Judge Advocate General: Deputy Judge Advocate General; Assistant Judge Advocates General

(a) A judge advocate of the Navy or Marine Corps who has the qualifications prescribed for the Judge Advocate General in section 514(b) of this title shall be detailed as Deputy Judge Advocate General of the Navy. While so serving he is entitled to the rank and grade of rear admiral [(upper half)] or major general, as appropriate, unless entitled to a higher rank or grade under another provision of law. The Deputy Judge Advocate General is entitled to the same privileges of retirement as provided for chiefs of bureaus in section 5133 of this title.

(b) An office of the Judge Advocate General's Corps who has the qualifications prescribed for the Judge Advocate General in section 5148(b) of this title may be detailed as Assistant Judge Advocate General of the Navy. While so serving he is entitled to the rank and grade of **[**rear admiral (lower half),**]** *commodore admiral,* unless entitled to a higher rank or grade under another provision of law. An officer who is retired while serving as Assisstant Judge Advocate General of the Navy under this subsection or who, after serving at least twelve months as Assistant Judge Advocate General of the Navy, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the rank and grade of **[**rear admiral (lower half). If he is retired as a rear admiral, he is entitled to retired pay in the lower half of that grade, unless entitled to higher pay under another provision of law. *commodore admiral. If he is retired as a commodore admiral, he is entitled to the retired pay of that grade, unless entitled to higher pay under another provision of law.*

(c) A judge advocate of the Marine Corps who has the qualifications prescribed for the Judge Advocate General in section 5148(b) of this title may be detailed as Assistant Judge Advocate General of the Navy. While so serving he is entitled to the rank and grade of brigadier general, unless entitled to a higher rank or grade under another provision of law. An officer who is retired while serving as Assistant Judge Advocate General of the Navy under this subsection or who, after serving at least twelve months as Assistant Judge Advocate General of the Navy, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the rank and grade of brigadier general. If he is retired as a brigadier general, he is entitled to the retired pay of that grade, unless entitled to higher pay under another provision of law.

(d) When there is a vacancy in the Office of the Judge Advocate General, or during the absence or disability of the Judge Advocate General, the Deputy Judge Advocate General shall perform the duties of the Judge Advocate General until a successor is appointed or the absence or disability ceases.

(e) When subsection (d) cannot be complied with because of the absence or disability of the Deputy Judge Advocate General, the Assistant Judge Advocates General, in the order directed by the Secretary of the Navy, shall perform the duties of the Judge Advocate General.

§5150. Office of naval Research: Chief; appointment, term, emoluments; Assistant Chief; succession to duties

(a) There is in the Office of the Secretary of the Navy an Office of Naval Research, headed by the Chief of Naval Research.

(b) The Chief of Naval Research shall be appointed by the President, by and with the advice and consent of the Senate, for a term of not more than three years, from officers on the **[**active list**]** *active-duty list* of the Navy not below the grade of commander.

(c) The Chief of Naval Research is entitled to the same rank and privileges of retirement as provided for chiefs of bureaus in section 5133 of this title.

(d) An officer on the [active list] *active-duty list* of the Navy may be detailed as Assistant Chief of Naval Research.

(e) When there is a vacancy in the office of Chief of Naval Research, or during the absence or disability of the Chief, the Assistant Chief, unless otherwise directed by the President, shall perform the duties of the Chief until a successor is appointed or the absence or disability ceases.

* * * * * * *

§ 5155. Staff corps of the Navy

(a) The staff corps of the Navy are—

(1) the Medical Corps;

(2) the Dental Corps;

(3) the Judge Advocate General's Corps;

(4) the Chaplain Corps; and

(5) such other staff corps as may be established by the Secretary of the Navy under subsection (b).

(b)(1) The Secretary of the Navy may establish staff corps of the Navy in addition to the Medical Corps, the Dental Corps, the Judge Advocate General's Corp's, and the Chaplain Corps. The Secretary may designate commission officers in, and may assign members to, any such staff corps.

(2) Subject to subsection (c), the Secretary of the Navy may provide for the appointment of the chief of any staff corps established under this subsection.

(c) The Secretary of the Navy, whenever the needs of the service require, may convene a selection board under section 611(a) of this title to select an officer in the Nurse Corps or Medical Service Corps for promotion to the grade of commodore admiral or rear admiral, as approprite. An officer so selected shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years to serve in the position, respectively, of Director of the Nurse Corps or Director of the Medical Service Corps.

CHAPTER 515—COMMANDANT OF THE MARINE CORPS; HEADQUARTERS, MARINE CORPS

Sec.
5201. Commandant: appointment; term; emoluments.
5202. Assistant Commandant: detail; [pay;] succession to duties.
5203. Director of Personnel: detail.
5204. Quartermaster General: detail.
[5206. Director of Women Marines: detail; retirement]

§ 5201. Commandant: appointment; term; emoluments

(a) There is a Commandant of the Marine Corps, appointed by the President, for a term of four years, by and with the advice and consent of the Senate, to serve at the pleasure of the President, from officers on the [active-duty list] of the Marine Corps, not below the rank of colonel. In time of war or national emergency declared by the Congress after December 31, 1968, he may be reappointed for a term of not more than four years.

(b) The Commandant of the Marine Corps, while so serving, has the rank of general.

(c) An officer who is retired while serving as Commandant of the Marine Corps, or who, after serving at least two and one-half years as Commandant, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the grade of general. The retired pay of such an officer shall be computed at the highest rates of basic pay applicable to him while he served in that office.

(d) Under the direction of the Secretary of the Navy, the Commandant of the Marine Corps shall exercise supervision over such of the members and organizations of the Marine Corps and Navy as the Secretary of the Navy determines. Such supervision shall be exercised in a manner consistent with the full operational command vested in unified or specified combatant commanders under section 124 of this title.

§ 5202. Assistant Commandant: detail; [pay;] succession to duties

(a) An officer on the [active list] *active-duty list* of the Marine Corps not restricted in the performance of duty may be detailed as Assistant Commandant of the Marine Corps.

(b) When there is a vacancy in the office of Commandant of the Marine Corps, or during the absence or disability of the Commandant, the Assistant Commandant and then the officers of the Marine Corps not restricted in the performance of duty on duty at Headquarters, Marine Corps, in order of seniority, shall perform the duties of the Commandant, unless otherwise directed by the President.

(c) The Assistant Commandant has such authority and duties with respect to the Marine Corps as the Commandant, with the approval of the Secretary of the Navy, may delegate to or prescribe for him. Orders issued by the Assistant Commandant in performing such duties have the same effect as those issued by the Commandant.

(d) The Assistant Commandant of the Marine Corps, while so serving, has the grade of general, at the discretion of the President, by and with the advice and consent of the Senate.

* * * * * * *

[§ 5206. Director of Women Marines: detail; retirement

[(a) A woman officer on the active list of the Marine Corps serving in a grade not below major may be detailed to duty in the Office of the Commandant of the Marine Corps to assist the Commandant in the administration of women's affairs. While so serving, she has the rank of colonel unless otherwise entitled to a higher rank or grade. Her permanent status as a commissioned officer is not disturbed by her detail under this section.

[(d) An officer detailed as an assistant to the Commandant under subsection (a), who has served at least two and one-half years as such assistant, and who is retired for any reason, either while so serving or after completion of that service while serving in a lower grade or rank, may, in the discretion of the President, be retired with the grade of colonel and with retired pay based on that grade.

[CHAPTER 517—FLEET COMMANDS AND OTHER HIGH POSITIONS

[Sec.
[5231. Navy positions: admirals and vice admirals.
[5232. Marine Corps positions: general and lieutenant generals.
[5233. Retirement.
[5234. Suspension provision.

[§ 5231. Navy positions: admirals and vice admirals

[(a) The President may designate officers on the active list of the Navy above the grade of captain and, in time of war or national emergency, above the grade of commander for—

[(1) command of fleets or subdivisions of fleets;

[(2) command of naval units afloat to perform special or unusual missions; or

[(3) performance of duty of great importance and responsibility.

An officer so designated may be appointed by the President, by and with the advice and consent of the Senate, to the grade of admiral or vice admiral. Such an appointment is effective on the date the officer reports for the designated duty and terminates on the date he is detached. The Secretary of the Navy shall determine the rank of officers in the grade in which they are serving under this section.

[(b) The number of officers serving in the grades of admiral and vice admiral under subsection (a) of this section and section 5081 of this title may not be more than 15 percent of the number of officers on active duty above the grade of captain. Of the number of officers that may serve in the grades of admiral and vice admiral, as determined under this subsection, not more than 25 percent may serve in the grade of admiral.

[(c) An officer while serving as Chairman of the Joint Chiefs of Staff, if serving in the grade of admiral, is in addition to the number authorized for that grade under subsection (b) of this section.

[(d) An officer of the Navy assigned as Chief of Staff to the President shall be appointed by the President, by and with the advice and consent of the Senate, to the grade of admiral, unless he is otherwise entitled to the same or a higher grade. Such an appointment is effective while the officer is so serving, and while in that grade he is in addition to the number authorized for that grade under subsection (b) of this section.

[(e) An appointment under this section does not create a vacancy in the grade held by the officer at the time he is appointed and does not increase the authorized strength of the Navy in officers on the active list.

[§ 5232. Marine Corps positions: general and lieutenant generals

(a) The President may designate officers on the active list of the Marine Corps above the grade of colonel and, in time of war or national emergency, above the grade of lieutenant colonel for—

[(1) appropriate higher commands; or

[(2) performance of duty of great importance and responsibility.

An officer so designated may be appointed by the President, by and with the advice and consent of the Senate, to the grade of lieutenant general. Such an appointment is effective on the date the officer reports for the designated duty and terminates on the date he is detached. The Secretary of the Navy shall determine the rank of officers in the grade in which they are serving under this section.

[(b) The number of officers serving in the grades of general and lieutenant general may not be more than 15 percent of the number of officers on active duty above the grade of colonel.

[(c) An officer of the Marine Corps assigned as Chief of Staff to the President shall be appointed by the President, by and with the advice and consent of the Senate, to the grade of general. Such an appointment is effective while the officer is so serving, and while in that grade he is in addition to the number authorized for that grade under subsection (b) of this section.

[(d) An appointment under this section does not create a vacancy in the grade held by the officer at the time he is appointed and does not increase the authorized strength of the Marine Corps in officers on the active list.

[§ 5233. Retirement

[An officer who is serving or has served in a grade to which appointed under section 5231 or 5232 of this title may, upon retirement, be appointed by the President, by and with the advice and consent of the Senate, to the highest grade held by him while on the active list and with retired pay based on that grade.

[§ 5234. Suspension provision

[During a war or national emergency, the President may suspend any provision of section 5231 or 5232 of this title relating to distribution in grade. Such a suspension may not continue beyond September 30 of the fiscal year following that in which the war or national emergency ends.]

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§ 5401. Regular Navy: enlisted members

[The authorized strength of the Regular Navy in enlisted members, excluding retired members and members furloughed without pay, is 500,000. However, this strength may be temporarily exceeded at any time in a fiscal year if the daily average number in that year does not exceed it.

§ 5402. Regular Marine Corps: total; enlisted members

[(a) Except in time of war or national emergency declared by Congress after June 28, 1952, the authorized strength of the Regular Marine Corps, excluding retired members, is 400,000. However, this strength may be temporarily exceeded at any time in a fiscal year if the daily average number in that year does not exceed it.

[(b) Except in time of war or national emergency declared by Congress after June 28, 1952, the authorized strength of the Regular Marine Corps in enlisted members, excluding retired enlisted members, is 400,000 less the actual strength of the Marine Corps in permanent regular officers other than retired regular officers. However, this strength may be temporarily exceeded at any time in a fiscal year if the daily average number in that year does not exceed it.

[§ 5403. Navy: line officers on the active list

[The authorized strength of the active list of the Navy in line officers is equal to 7 percent of the authorized strength of the Regular Navy in enlisted members authorized by section 5401 of this title.

[§ 5404. Navy: staff corps officers on the active list

[(a) The authorized strength of the active list of the Navy in officers in the Supply Corps and the Civil Engineer Corps is equal to

12 percent and 3 percent, respectively, of the authorized strength of the active list of the Navy in line officers authorized by section 5403 of this title.

[(b) The Secretary of the Navy, as of January 1 of each year, shall compute the authorized strength of the active list of the Navy in officers in the Medical Corps, the Dental Corps, the Chaplain Corps, the Medical Service Corps, and the Nurse Corps. The authorized strength in each of these corps is equal to the applicable percentage of the sum of—

[(1) the authorized strengths of the active lists of the Navy and the Marine Corps authorized by sections 5403, 5405, and this section;

[(2) the authorized strengths of the Regular Navy and the Regular Marine Corps in enlisted members authorized by sections 5401 and 5402 of this title;

[(3) the authorized strength of the Navy in midshipmen at the Naval Academy; and

[(4) the actual number of officers holding permanent appointments in warrant officer grades in the Regular Navy and the Regular Marine Corps, excluding retired officers.

The percentages are:

[(1) Medical Corps—$\frac{65}{100}$ of 1 percent.
[(2) Dental Corps—$\frac{2}{10}$ of 1 percent.
[(3) Chaplan Corps—$\frac{125}{1000}$ of 1 percent.
[(4) Medical Service Corps—$\frac{13}{100}$ of 1 percent.
[(5) Nurse Corps—$\frac{6}{10}$ of 1 percent.

The authorized strength of the active list of the Navy in officers in these corps may not be varied between computations.

[(c) the Secretary of the Navy, as of January 1 of each year, shall establish the authorized strength of the active list of the Navy in officers in the Judge Advocate General's Corps.

[§ 5405. Marine Corps: officers on the active list

[Subject to section 5402(a) of this title, the authorized strength of the active list of the Marine Corps is equal to 7 percent of the authorized strength of the Regular Marine Corps in enlisted members authorized by section 5402(b) of this title.

[§ 5406. Navy: officers designated for engineering duty

[Of the actual number of officers on the active list in the line of the Navy not more than $5\frac{5}{10}$ percent may be officers designated for engineering duty.

[§ 5407. Navy: officers designated for aeronautical engineering duty

[Of the actual number of officers on the active list in the line of the Navy not more than $3\frac{5}{10}$ percent may be officers designated for aeronautical engineering duty.

[§ 5408. Navy: officers designated for special duty

[Of the actual number of officers on the active list in the line of the Navy not more than 6 percent may be officers designated for special duty.

[§ 5409. Navy and Marine Corps: officers designated for limited duty

[(a) Of the actual number of officers on the activity list in the line of Navy, excluding officers designated for engineering duty, aeronautical engineering duty, and special duty, not more than $6^{22}/_{100}$ percent may be officers designated for limited duty.

[(b) The number of officers on the active list of the Navy in the Supply Corps and the Civil Engineer Corps that may be designated for limited duty may not exceed 12 percent and 3 percent, respectively, of the number of officers authorized in subsection (a).

[(c) Of the actual number of officers on the active list of the Marine Corps not more than $6^{22}/_{100}$ percent may be officers designated for limited duty.

[§ 5412. Regular Navy: Hospital Corps

[The authorized strength of the Regular Navy in enlisted members in the Hospital Corps, excluding retired members and members furloughed without pay, is equal to $3^{5}/_{10}$ percent of the sum of the authorized strengths of the Regular Navy and the Regular Marine Corps in enlisted members authorized by sections 5401 and 5402 of this title.]

* * * * * * *

§ 5414. Naval Reserve and Marine Corps Reserve: officers in an active status in [permanent] grades above chief warrant officer, W-4 [1]

(a) The authorized strength of the Naval Reserve in officers in an active status in grades above chief warrant officer, W-4, is 150,000.

(b) The authorized strength of the Marine Corps Reserve in officers in an active status in grades above chief warrant officer, W-4, is 24,500.

(c) The authorized strengths prescribed by this section may not be exceeded unless the Secretary of the Navy determines that a greater number is necessary for planned mobilization requirements, or unless the excess results directly from the operation of mandatory provisions of law.

[§ 5415. Enlisted members serving as midshipmen or cadets excluded

[Enlisted members of the Navy or the Marine Corps serving as cadets at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as midshipmen at the United States Naval Academy or in the Naval Reserve, are not counted in computing strengths under any law.

[§ 5416. Personnel detailed outside Department of Defense

[Members of the Navy or the Marine Corps, or of the Coast Guard when it is operating as a service in the Navy, who are detailed for duty with agencies of the United States outside the Department of Defense on a reimbursable basis are not counted in computing strengths or numbers in grade under any law.

[§ 5417. Estimate of future regular commissioned officer strength

[The Secretary of Defense, with the approval of the President, shall estimate each year, for each of the five years following that year, the strengths of the Navy and the Marine Corps in officers on the active lists exclusive of officers specifically authorized by law as additional numbers.]

CHAPTER 533—DISTRIBUTION IN GRADE

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§ 5441. Prescribed number; vacancies

In this chapter "prescribed number" or "number * * * prescribed", as applied to a grade [or combination or grades,] means the number of officers of a described corps, designation, or other category that shall be maintained in the grade [or combination of grades] concerned. Except as otherwise specifically provided, the actual number of officers in a grade [or combination of grades] may not exceed the prescribed number. Vacancies occur whenever, and to the extent that, the actual number falls below the prescribed number.

[§ 5442. Navy: line officers on active duty]

[(a) Of the total number of officers serving on active duty in the line of the Navy in the grade of ensign and above, excluding fleet admirals and officers carried as additional numbers in grade, the number of officers who may serve in each of the grades above lieutenant may not, except as provided in subsection (b), exceed a number appropriate to the total number as set forth in the following table. If the total number of officers serving on active duty in the line of the Navy in the grade of ensign and above, excluding fleet admirals and officers carried as additional numbers in grade, falls between two strengths shown in the first column of the table, the number for each grade is determined by proportionate interpolation between the respective numbers for the two strengths.

[(b) The Secretary of the Navy, whenever the needs of the service require but at least once annually, shall compute the number of officers authorized under subsection (a) for each grade above lieutenant. The number so computed is the number of line officers on active duty, excluding officers carried as additional numbers in grade, prescribed for the grade concerned. However, if the Secretary determines at the time of making these computations that the number of officers required to meet the needs of the service in any grade above above lieutenant is less than the prescribed number for that grade as computed, the lesser number becomes the prescribed number for the grade and the reduction may be applied as an increase in the prescribed number for any lower grade.

[(c) Of the numbers of officers prescribed for the grades of commander and lieutenant commander, as computed or determined under subsection (b), not more than the following percentages may be officers designated for limited duty:

[(1) Commander—$3^{64}/_{100}$ percent.

[(2) Lieutenant commander—$8^{62}/_{100}$ percent.

[(d) The Secretary, whenever the needs of the service require, but at least once annually, shall compute the number of officers designated for limited duty authorized under subsection (c) for the grades of commander and lieutenant commander. The Secretary shall also determine the number of such officers, not to exceed the computed number, that will be required to meet the needs of the service during the ensuing year in each of these grades. The number so determined for each grade is the number of officers designated for limited duty prescribed for the grade concerned.

[(e) At the time of making the computations required by subsection (b), the Secretary shall also determine the numbers of line officers on active duty, excluding officers carried as additional numbers in grade, that will be required to meet the needs of the service during the ensuing year in the grades of lieutenant, lieutenant (junior grade), and ensign. The numbers so determined are the prescribed numbers for these grades.

[(f) The number of officers designated for engineering duty, aeronautical, engineering duty, and special duty serving on active duty in the grade of rear admiral may not exceed 13 percent of the number of officers prescribed for the grade of rear admiral as computed or determined under subsection (b). The Secretary, whenever the needs of the service require but at least once annually, shall compute the number of officers in the grade of rear admiral authorized under this subsection. The number so computed is the prescribed number of officers restricted in the performance of duty serving on active duty in the grade of rear admiral. However, if the Secretary determines at the time of making this computation that the number of officers designated for engineering duty, aeronautical, engineering duty, and special duty required to meet the needs of the service in the grade of rear admiral is less than the prescribed number as computed, the lesser number becomes the prescribed number.

[(g) The number of officers designated for engineering duty, aeronautical engineering duty, and special duty, respectively, serving on active duty in the combined grades of captain, commander, and lieutenant commander may not exceed the following percentages of the sum of the numbers of officers prescribed for those grades as computed or determined under subsection (b):

[(1) Engineering duty—11 percent.

[(2) Aeronautical engineering duty—7 percent.

[(3) Special duty—12 percent.
The Secretary, whenever the needs of the service require but at least once annually, shall compute the numbers of officers designated for engineering duty, aeronautical engineering duty, and special duty, respectively, authorized under this section for these combined grades. The number so computed for each designation is the number of officers of that designation serving on active duty prescribed for these combined grades. However, if the Secretary determines at the time of making these computations that the number of officers of any designation required to meet the needs of the service in the combined grades is less than the prescribed number as computed, the lesser number becomes the prescribed number of officers of that designation.

[(h) The prescribed numbers of officers computed or determined under this section may not be varied between computations. However, the prescribed number for a grade is temporarily increased during the period between one computation and the next succeeding computation by—

[(1) the number of officers originally appointed in that grade during that period;

[(2) the number of officers of the Naval Reserve ordered to active duty in that grade during that period; and

[(3) the number of officers of that grade for whom vacancies exist in the next higher grade but whose promotion has been delayed for any reason.

[(i) For the purpose of this section, each officers is counted in the grade in which he is serving whether under a permanent or a temporary appointment. However, each officer serving under an appointment in the grade of admiral or vice admiral and each officer in a grade to which he was appointed under section 5597 or promoted under section 5787 of this title is counted in the grade he would hold had he not been so appointed or promoted.]

§5442. Navy: line officers on active duty; commodore admiral and rear admiral

(a) Of the total number of officers serving on active duty in the line of the Navy in the grade of ensign and above (excluding officers in categories specified in section 523(b) of this title), the number of officers who may serve in the grades or commodore admiral and rear admiral may not, except as provided in subsection (b), exceed a number appropriate to the number set forth in the following table. If the total number of officers serving on active duty in the line of the Navy in the grade of ensign and above (excluding officers in categories specified in section 523(b) of this title) falls between two strengths shown in the first column of the table, the number for the grades of commodore admiral and rear admiral is determined by proportionate interpolation between the respective numbers for the two strengths.

Total number of line officers serving on active duty in the grade of ensign and above (excluding officers carried as additional numbers in grade):	*Number of commodore admirals and rear admirals*
30,000	*215*
40,000	*222*
50,000	*228*

Total number of line officers serving on active duty in the grade of ensign and above (excluding officers carried as additional numbers in grade):	*Number of commodore admirals and rear admirals*
60,000	*237*
70,000	*244*
80,000	*252*
90,000	*259*
100,000	*262*
125,000	*291*
150,000	*305*
175,000	*323*
200,000	*342*
250,000	*379.*

(b)(1) The Secretary of the Navy, whenever the needs of the service require, but at least once annually, shall compute the number of officers authorized under subsection (a) for the grades of commodore admiral and rear admiral. The number so computed for such grades shall be the number of officers on active duty (excluding officers in categories specified in section 523(b) of this title) specified for such grades. If at the time of making computations under this subsection the Secretary determines that the number of officers required to meet the needs of the service in the grades of commodore admiral and rear admiral is less than the specified number for such grades, the lesser number becomes the specified number for such grades. Any reduction under this subsection may be applied as an increase in the prescribed number for any lower grade.

(2) When making a computation under this subsection, the Secretary shall prescribe a number for the grade of rear admiral. The number prescribed for the grade of commodore admiral is the number specified in this subsection less the number prescribed for the grade of rear admiral.

(c)(1) Whenever the needs of the service require but at least once annually, the Secretary of the Navy shall specify the total number of officers designated for engineering duty, aeronautical engineering duty, and special duty who may be serving on active duty in the grades of commodore admiral and rear admiral. Such number may not exceed 13 percent of the number of officers specified in subsection (b) for the grades of commodore admiral and rear admiral. If at the time of making a specification under this subsection, the Secretary determines that the total number of such officers required to meet the needs of the service in the grades of commodore admiral and rear admiral is less than the specified number for such grades as specified under this subsection, the lesser number becomes the specified numbers for officers in such grades. Any reduction under this subsection may be applied as an increase in the prescribed number for any lower grade.

(2) When making a specification under this subsection, the Secretary shall prescribe a number for the grade for rear admiral. The number prescribed for the grade of commodore admiral shall be the number specified in this subsection less the number prescribed for the grade of rear admiral.

(3) For the purpose of subsection (a), all officers designated for engineering duty, aeronautical engineering duty, and special duty are additional numbers in grade.

(d) The prescribed numbers of officers computed or determined under this section may not be varied between computations. However, the prescribed number for a grade is temporarily increased during the period between one computation and the next succeeding computation by—

(1) the number of officers of the Naval Reserve ordered to active duty in that grade during that period; and

(2) the number of officers of that grade for whom vacancies exist in the next higher grade but whose promotion has been delayed for any reason.

(e) For the purpose of this section, each officer is counted in the grade in which he is serving, whether under a permanent or a temporary appointment. However, each officer serving under an appointment in the grade of admiral or vice admiral, and each officer serving in the grade of commodore admiral or rear admiral who was appointed under section 603 of this title or promoted under section 624 of this title, is counted in the grade he would hold had he not been so appointed or promoted.

(f) The sum of the prescribed numbers for the grade of rear admiral under subsections (b) and (c) may not exceed 50 percent of the sum of the numbers specified under such subsections for the grades of commodore admiral and rear admiral.

§ 5443. Marine Corps: officers on active duty; *brigadier generals and major generals*

[(a) Of the total number of officers serving on active duty in the Marine Corps in the grade of second lieutenant and above the number of officers who may serve in each of the grades above captain may not, except as provided in subsections (b) and (c), exceed the number appropriate to the total number as set forth in the following table. If the total number of officers serving on active duty in the grade of second lieutenant and above falls between two strengths shown in the first column of the table, the number for each grade is determined by proportionate interpolation between the respective numbers for the two strengths.

[OFFICERS SERVING ON ACTIVE DUTY IN THE GRADE OF SECOND LIEUTENANT AND ABOVE

[*Total*	*Brigadier general and major general*	*Colonel*	*Lieutenant colonel*	*Major*
[10,000	58	600	1,200	1,800
[12,500	62	615	1,250	2,175
[15,000	69	630	1,295	2,535
[17,500	72	645	1,335	2,880
[20,000	75	660	1,370	3,210
[22,500	79	670	1,400	3,525
[25,000	82	680	1,425	3,825
[27,500	84	690	1,445	4,110
[30,000	85	700	1,460	4,380
[32,500	87	705	1,470	4,635
[35,000	89	710	1,475	4,875]

(a) Except as provided in subsection (b), the number of officers in the Marine Corps who may serve on active duty in the grades of

brigadier general and major general may not exceed a number appropriate to the total number of officers serving on active duty in the Marine Corps in the grade of second lieutenant or above as set forth in the following table. If the total number of officers serving on active duty in the grade of second lieutenant or above (excluding officers in categories specified in section 523(b) of this title) falls between two strengths shown in the first column of the table, the number for the grades of brigadier general and major general is determined by interpolation between the respective numbers of the two strengths.

Total number of officers serving on active duty in the grade of second lieutenant and above:	*Number of brigadier generals and major generals*
10,000	*58*
12,500	*62*
15,000	*69*
17,500	*72*
20,000	*75*
22,500	*79*
25,000	*82*
27,500	*84*
30,000	*85*
32,500	*87*
35,000	*89.*

(b) The Secretary of the Navy, whenever the needs of the service require but at least once annually, shall compute the number of officers authorized under subsection (a) for the grades of major general and brigadier general. At the time of making this computation, the Secretary shall also determine the number of officers required to meet the needs of the service in each of those grades. The number so determined for each grade is the number of officers on active duty prescribed for that grade. However, the prescribed number for the grade of major general may not exceed 50 percent of the sum of the prescribed numbers for that grade and the grade of brigadier general, and the sum of the prescribed numbers may not exceed the number authorized for brigadier general and major general under subsection (a). If the sum of the prescribed numbers is less than that authorized for brigadier general and major general under subsection (a) the difference may be applied as an increase in the prescribed number computed or determined under **[**subsection (c)**]** *section 523(a)(1) of this title* for any grade.

[(c) The Secretary, whenever the needs of the service require but at least once annually, shall compute the number of officers authorized under subsection (a) for each of the grades of colonel, lieutenant colonel, and major. The number so computed is the number of officers on active duty prescribed for the grade concerned. However, if the Secretary determines at the time of making these computations that the number of officers required to meet the needs of the service in any such grade is less than the prescribed number for that grade as computed, the lesser number becomes the prescribed number for the grade and the reduction may be applied as an increase in the prescribed number for any lower grade.

[(d) Of the numbers of officers prescribed for the grades of lieutenant colonel and major, as computed or determined under subsection (c), not more than the following percentages may be officers designated for limited duty:

[(1) Lieutenant colonel—$3^{64}/_{100}$ percent.

[(2) Major—$8^{62}/_{100}$ percent.

[(e) The Secretary, whenever the needs of the service require but at least once annually, shall compute the number of officers designated for limited duty authorized under subsection (d) for the grades of lieutenant colonel and major. The Secretary shall also determine the number of such officers, not to exceed the computed number, that will be required to meet the needs of the service during the ensuing year in each of these grades. The number so determined for each grade is the number of officers designated for limited duty prescribed for the grade concerned.

[(f) At the time of making the computations required by subsections (b) and (c), the Secretary shall also determine the number of officers on active duty that will be required to meet the needs of the service during the ensuing year in the grades of captain, first lieutenant, and second lieutenant. The numbers so determined are the prescribed numbers for these grades.]

[(g)] *(c)* The prescribed numbers of officers computed or determined under this section may not be varied between computations. However, the prescribed number for a grade is temporarily increased during the period between one computation and the next succeeding computation by—

[(1) the number of officers originally appointed in that grade during that period;]

[(2)] *(1)* the number of officers of the Marine Corps Reserve ordered to active duty in that grade during that period; and

[(3)] *(2)* the number of officers of that grade for whom vacancies exist in the next higher grade but whose promotion has been delayed for any reason.

[(h)] *(d)* For the purpose of this section, each officer is counted in the grade in which he is serving, whether under a permanent or a temporary appointment. [However, each officer serving under an appointment in the grade of general or lieutenant general and each officer in a grade to which he was appointed under section 5597 or promoted under section 5787 of this title is counted in the grade he would hold had he not been so appointed or promoted.] *However, each officer serving under an appointment in the grade of general or lieutenant general, and each officer serving in the grade of brigadier general or major general who was appointed under section 603 of this title, is counted in the grade he would hold had he not been so appointed or promoted.*

§5444. Navy: staff corps officers on active duty ***in the grades of commodore admiral and rear admiral***

[(a) The number of officers serving on active duty in the grade of rear admiral in the Medical Corps, the Supply Corps, the Chaplain Corps, the Civil Engineer Corps, and the Dental Corps, respectively, excluding any rear admiral serving as a chief of bureau, may not exceed, in each corps, a number appropriate to the total number of officers in that corps serving on active duty, as set forth in the following tables. If the total number of officers on active duty in any corps falls between two strengths shown in the first column of the appropriate table, the number of rear admirals is determined by proportionate interpolation between the numbers for the two strengths. If the number of officers on active duty in a corps is less than the smallest tabulated number for the corps concerned, the number for the grade of rear admiral in that corps is $\frac{2}{10}$ of 1 percent of the total number of officers serving on active duty in the corps.

MEDICAL CORPS

Total number of officers in the corps on active duty	*Number of rear admirals*
3,000	15
4,000	18
5,000	19
7,000	20
9,000	21
11,000	22
13,000	23
15,000	24

SUPPLY CORPS

Total number of officers in the corps on active duty	*Number of rear admirals*
2,600	13
3,000	15
4,000	18
5,000	19
7,000	20
9,000	21
11,000	22
13,000	23
15,000	24
17,000	25

CHAPLAIN CORPS

Total number of officers in the corps on active duty	*Number of rear admirals*
500	2
1,600	3
2,800	3

CIVIL ENGINEER CORPS

Total number of officers in the corps on active duty	*Number of rear admirals*
1,000	5
1,500	6
2,000	7
3,000	8
4,000	9
5,000	10
7,000	11

[

DENTAL CORPS

Total number of officers in the corps on active duty	*Number of rear admirals*
1,000	5
2,000	6
4,000	7
7,000	8

[(c) The Secretary of the Navy, whenever the needs of the service require but at least once annually, shall compute the number of rear admirals authorized under this section for each corps. The numbers so computed are the numbers of officers serving on active duty prescribed for the grade of rear admiral in the corps concerned. However, if the Secretary determines at the time of making any computation under this section that the number of officers required to meet the needs of the service in the grade of rear admiral in any of these corps is less than the prescribed number as computed, the lesser number becomes the prescribed number for the grade of rear admirals in the corps concerned.

[(d) Each officer in a staff corps who serves as a chief of bureau and who, before or during that service, is appointed to the grade of rear admiral under section 5772 or section 5781 of this title shall, upon termination of his appointment as chief of bureau, be carried in excess of the prescribed number until the next vacancy occurs in the grade of rear admiral in his corps.

[(e) The prescribed numbers of officers computed or determined under this section may not be varied between computations.

[(f) For the purpose of this section, each officer is counted in the grade in which he is serving, whether under a permanent or a temporary appointment. However, each officer serving under an appointment in the grade of admiral or vice admiral and each officer in a grade to which he was appointed under section 5597 or promoted under section 5787 of this title is counted in the grade he would hold had he not been so appointed or promoted.]

(a) The total number of officers serving on active duty in the grades of commodore admiral and rear admiral in the staff corps of the Navy excluding any flag officer serving as a Chief of Bureau, may not exceed a number appropriate to the total number of officers in all the staff corps serving on active duty, as set forth in the following table. If the total number of officers on active duty in all the staff corps falls between two strengths shown in the first column of the table, the number of rear admirals and commodore admirals is determined by proportionate interpolation between the numbers of the two strengths.

Total number of officers in all the staff corps on active duty:	*Number of rear admirals and commodore admirals*
9,000	*44*
13,000	*53*
19,000	*57*
27,000	*61*
32,000	*64*
37,000	*67*

(b) The Secretary of the Navy, whenever the needs of the service require but at least once annually, shall compute the number of officers authorized under subsection (a) for the grades of commodore admiral and rear admiral in all the staff corps. The number so computed is the number of officers on active duty specified for the grades of commodore admiral and rear admiral in all the staff corps. If the Secretary determines at the time of making any such computation that the number of officers required to meet the needs of the service in the grades of commodore admiral and rear admiral for all the staff corps is less than the specified number for such grades for all the staff corps, the lesser number becomes the specified number for such grades for all the staff corps and the reduction may be applied as an increase in the authorized number for any lower grade of the Navy under section 523 of this title.

(c) Each officer in a staff corps who serves as a chief of bureau and who, before or during that service, is appointed to the grade of commodore admiral or rear admiral under section 624 of this title shall, upon termination of his appointment as chief of bureau, be carried in excess of the prescribed number until the next vacancy occurs in his grade in his corps.

(d) The prescribed number of officers computed or determined under this section may not be varied between computations.

(e) For the purpose of this section, each officer is counted in the grade in which he is serving, whether under a permanent or a temporary appointment. However, each officer serving under an appointment in the grade of admiral or vice admiral and each officer in a grade to which he was appointed under section 603 of this title is counted in the grade he would hold had he not been so appointed or promoted.

(f) The Secretary shall prescribe the number of rear admirals in each staff corps. The total of the prescribed numbers of rear admirals for all the staff corps may not exceed 50 percent of the total number computed under subsection (b). The Secretary shall further prescribe the number of commodore admirals in each staff corps. The prescribed number of rear admirals for any staff corps may not exceed the prescribed number of commodore admirals for that staff corps.

(g) For the purpose of computing the total number of flag officers in the staff corps of the Navy, flag officers of the Judge Advocate General's Corps shall be considered additional numbers in grade.

[§ 5445. Suspension: sections 5442, 5443, 5444

[During any period when he determines that the needs of the service so require, the President may suspend any provision of section 5442, 5443, or 5444 of this title relating to—

[(1) officers serving in the grades of lieutenant and lieutenant (junior grade) in the Navy; or

[(2) officers serving in the grades of captain and first lieutenant in the Marine Corps.]

§ 5446. Application: sections 5442, 5443, 5444

(a) Sections 5442, 5443, and 5444 of this title are applicable only when the number of officers serving on active duty in the grade of ensign and above in the line of the Navy exceeds the number of officers on the [active duty] *active-duty list* in the line of the Navy.

(b) Sections 5442, 5443, and 5444 of this title do not apply to—

[(1) women officers appointed under section 5590 of this title;

[(2) women reserve officers, other than reserve officers in the Nurse Corps and other than reserve officers appointed under section 5581 of this title;]

[(3)] *(1)* retired officers;

[(4)] *(2)* officers of the Naval Reserve and the Marine Corps Reserve assigned to active duty for training;

[(5)] *(3)* officers of the Naval Reserve and the Marine Corps Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve or the Marine Corps Reserve; or

[(6)] *(4)* officers of the Naval Reserve and the Marine Corps Reserve ordered to temporary active duty for the purpose of prosecuting special work.

(c) Officers listed in subsection (b) are not counted as officers serving on active duty for the purpose of subsection (a) or for the purpose of sections 5442, 5443, and 5444 of this title.

[§ 5447. Navy: line officers on the active list; permanent grade

[(a) the distribution in permanent grades of officers on the active list in the line of the Navy, excluding fleet admirals and officers carried as additional numbers in grade, shall be based on the following percentages of the number of such officers:

[(1) Rear admiral—$^{75}/_{100}$ of 1 percent.

[(2) Captain—6 percent.

[(3) Commander—12 percent.

[(4) Lieutenant commander—18 percent.

[(5) Lieutenant—24$^{75}/_{100}$ percent.

[(6) lieutenant (junior grade) and ensign combined—38$^{50}/_{100}$ percent.

[(b) The Secretary of the Navy, as of January 1 of each year, shall compute the number of officers authorized under subsection (1) for each grade above lieutenant (junior grade) and for the combined grades of lieutenant (junior grade) and ensign. The number so computed is the number of line officers on the active list, excluding officers carried as additional numbers in grade, prescribed for the grade or grades concerned. However, if the number of officers prescribed for the grade of captain as computed cannot be attained because of the minimum total commissioned service required for promotion to that grade by section 5780 of this title, the Secretary shall determine an appropriate lesser number. The lesser number then becomes the prescribed number for the grade of captain and the Secretary shall make a corresponding increase in the prescribed number for one or more of the lower grades.

[(c) Notwithstanding the provisions of subsection (a), the number of officers not restricted in the preformance of duty who may hold permanent appointments on the active list in the line of the Navy in the grade of rear admiral may not exceed 150, except in time of war or national emergency.

[(d) Of the numbers of officers prescribed for grades below captain, as computed or determined under subsection (b), not more than the following percentages may be officers designated for limited duty:

[(1) Commander—$3\frac{64}{100}$ percent.
[(2) Lieutenant commander—$8\frac{62}{100}$ percent.
[(3) Lieutenant—$7\frac{72}{100}$ percent.
[(4) Lieutenant (junior grade) and ensign combined—$6\frac{4}{100}$ percent.

(e) The Secretary, as of January 1 of each year, shall compute the number of officers designated for limited duty authorized under subsection (d) for each grade above lieutenant (junior grade) and for the combined grades of lieutenant (junior grade) and ensign. The Secretary shall also determine the number of such officers, not to exceed the computed number, that will be required to meet the needs of the service during the ensuing year in each grade above lieutenant (junior grade) and in the combined grades of lieutenant (junior grade) and ensign. The number so determined is the prescribed number for the grade or grades concerned.

[(f) The number of officers on the active list designated for engineering duty, aeronautical engineering duty, and special duty holding permanent appointments in the grade of rear admiral may not exceed 13 percent of the number of officers prescribed for the grade of rear admiral as computed under subsection (b). The Secretary, as of January 1 of each year, shall compute the number of officers authorized by this subsection to hold permanent appointments in the grade of rear admiral. The number so computed is the number of officers on the active list, restricted in the performance of duty, prescribed for the permanent grade of rear admiral. However, except in time of war or national emergency, the total number of officers on the active list, restricted in the performance of duty, holding permanent appointments in the grade of rear admiral may not exceed 19.

[(g) The numbers of officers on the active list designated for engineering duty, aeronautical engineering duty, and special duty, respectively, holding permanent appointments in the combined grades of captain, commander, and lieutenant commander may not exceed the following percentages of the sum of the numbers of officers prescribed for those grades as computed or determined under subsection (b):

[(1) Engineering duty—11 percent.
[(2) Aeronautical engineering duty—7 percent.
[(3) Special duty—12 percent.

The Secretary, as of January 1 of each year, shall compute the number of officers designated for engineering duty, aeronautical engineering duty, and special duty, respectively, authorized under this section to hold permanent appointments in these combined grades. The number so computed for each designation is the number of officers of that designation on the active list prescribed for these combined permanent grades.

[(h) The prescribed numbers of officers computed or determined under this section may not varied between computations. However, the prescribed number for a grade is temporarily increased during the period between one annual computation and the next succeeding computation by—

[(1) the number of officers originally appointed in that grade during that period; and

[(2) the number of officers of that grade for whom vacancies exist in the next higher grade but whose promotion has been delayed for any reason.

[(i) For the purpose of this section—

[(1) each officer is counted in his permanent grade; and

[(2) women officers are not counted.

[§5418. Marine Corps: officers on the active list: permanent grade

[(a) The distribution in permanent grades of officers on the active list of the Marine Corps shall be based on the following percentages of the number of such officers:

[(1) Major general and brigadier general combined—$^{75}/_{100}$ of 1 percent.

[(2) Colonel—6 percent.

[(3) Lieutenant colonel—12 percent.

[(4) Major—18 percent.

[(5) Captain—$24^{75}/_{100}$ percent.

[(6) First lieutenant and second lieutenant combined—$38^{50}/_{100}$ percent.

However, the number of officers who may have permanent appointments on the active list of the Marine Corps in the grades of major general and brigadier general may not exceed 36, except in time of war or national emergency.

[(b) The Secretary of the Navy, as of January 1 of each year, shall compute the number of officers authorized under subsection (a) for the grades of major general and brigadier general. At the time of making this computation, the Secretary shall also determine the number of officers required to meet the needs of the service in each of those grades. The number so determined for each grade is the number of officers on the active list prescribed for that grade. However, the prescribed number for the grade of major general may not exceed 50 percent of the sum of the prescribed numbers for that grade and the grade of brigadier general, and the sum of the prescribed numbers must equal the number authorized for general officer grades under section (a).

[(c) The Secretary, as of January 1, of each year, shall compute the number of officers authorized under subsection (a) for each of the grades of colonel, lieutenant colonel, major, and captain and for the combined grades of first lieutenant and second lieutenant. The number so computed is the number of officers on the active list prescribed for the grade or grades concerned. However, if the number of officers prescribed for the grade of colonel as computed cannot be attained because of the minimum total commissioned service required for promotion to that grade by section 5780 of this title, the Secretary shall determine an appropriate lesser number. The lesser number then becomes the prescribed number for the grade of colonel and the Secretary shall make a corresponding increase in the prescribed number for one or more of the lower grades.

[(d) Of the numbers of officers prescribed for grades below colonel, as computed or determined under subsection (c), not more than the following percentages may be officers designated for limited duty:

[(1) Lieutenant colonel—$3^{64}/_{100}$ percent.

[(2) Major—$8\frac{62}{100}$ percent.
[(3) Captain—$7\frac{72}{100}$ percent.
[(4) First lieutenant and second lieutenant combined—$6\frac{4}{100}$ percent.

[(e) The Secretary, as of January 1 of each year, shall compute the number of officers designated for limited duty authorized under subsection (d) for each grade above first lieutenant and for the combined grades of first lieutenant and second lieutenant. The Secretary shall also determine the number of such officers, not to exceed the computed number, that will be required to meet the needs of the service during the ensuing year in each grade above first lieutenant and in the combined grades of first lieutenant and second lieutenant. The number so determined is the prescribed number for the grade or grades concerned.

[(f) The prescribed numbers of officers computed or determined under this section may not be varied between computations. However, the prescribed number for a grade is temporarily increased during the period between one annual computation and the next succeeding computation by—

[(1) the number of officers originally appointed in that grade during that period; and

[(2) the number of officers of that grade for whom vacancies exist in the next higher grade but whose promotion has been delayed for any reason.

[(g) For the purpose of this section—

[(1) each officer is counted in his permanent grade; and
[(2) women officers are not counted.

[§ 5449. Navy: staff corps officers on the active list; permanent grade

[(a) The number of officers on the active list of the Navy holding permanent appointments in the grade or rear admiral in the Medical Corps, the Supply Corps, the Chaplain Corps, the Civil Engineer Corps, and the Dental Corps, respectively, excluding any rear admiral serving as a chief of bureau, may not exceed, in any of those corps, $\frac{5}{10}$ of 1 percent of the number of officers on the active list of the Navy in the corps concerned. The Secretary of the Navy, as of January 1 of each year, shall compute the number of officers authorized under this section to hold permanent appointments in the grade of rear admiral in each corps. The number so computed for each corps is the number of officers on the active list in that corps prescribed for the permanent grade of rear admiral. However, except in time of war or national emergency, the numbers of officers who may hold permenent appointments on the active list of the Navy in the grade of rear admiral in these corps may not exceed—

[(1) 15 in the Medical Corps;
[(2) 13 in the Supply Corps;
[(3) 2 in the Chaplain Corps;
[(4) 4 in the Civil Engineer Corps; and
[(5) 4 in the Dental Corps.

[(b) Each officer who holds a permanent appointment on the active list of the Navy in the grade of rear admiral in a staff corps, and who serves as a chief of bureau, shall, upon the termination of his appointment as chief of bureau, be carried in excess of the prescribed number until the next vacancy occurs in the permanent grade of rear admiral in his corps.

[(d) The prescribed numbers of officers computed under this section may not be varied between computations.

[(e) For the purpose of this section—

[(1) each officer is counted in his permanent grade; and

[(2) women officers appointed under section 5590 of this title are not counted.]

§ 5450. Regular Navy: retired flag officers on active duty

[(a)] Except in time of war or national emergency, not more than ten retired [officers of the Regular Navy in the grade of rear admiral and above] *flag officers of the Regular Navy* may be on active duty.

[(b)] This section does not apply to fleet admirals or to retired officers ordered to temporary active duty to serve on boards convened under chapter 543 of this title.]

§ 5451. Suspension: preceding sections

(a) Except as provided in subsection (b), the President, during a war or national emergency, may suspend any provision of the preceding sections of this chapter. Such a suspension may not continue beyond September 30 of the fiscal year following that in which the war or national emergency ends.

(b) The President may suspend provisions of sections 5442, 5443, and 5444 of this title [relating to officers serving in grades above lieutenant in the Navy or captain in the Marine Corps] only during a war or national emergency declared by Congress or the President after May 5, 1954.

[§ 5452. Navy: women line officers on active duty; Marine Corps: women officers on active duty

[The Secretary of the Navy shall prescribe the number of women officers serving on active duty in the line of the Navy who may hold appointments in each grade above lieutenant (junior grade) and the number of women officers serving on active duty in the Marine Corps who may hold appointments in each grade above first lieutenant.]

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§ 5455. Computations and determinations: effect on status of officers

No computation or determination under section 5447, 5448, [5449, or 5452] *or 5449* of this title may reduce the grade or pay of any officer or remove any officer from the [active list] *active-duty list*.

* * * * * * *

§ 5457. Naval Reserve: officers in an active status in [permanent] grades above chief warrant officer, W-4

(a) The authorized strength of the Naval Reserve in officers in an active status in the [grade of rear admiral] *grades of commodore admiral and rear admiral,* exclusive of those counted under section

5442 of this title, is 48, distributed among the line and the staff corps as follows:

(1) Line—28.
(2) Medical Corps—7.
(3) Supply Corps—7.
(4) Chaplain Corps—1.
(5) Civil Engineer Corps—2.
(6) Judge Advocate General's Corps—1.
(7) Dental Corps—2.

Not more than 50 percent of the officers in an active status authorized under this subsection may serve in the grade of rear admiral.

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§ 5458. Marine Corps Reserve: officers in an active status in [permanent] grades above chief warrant officer, W-4

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CHAPTER 535—GRADE AND RANK OF OFFICERS

Sec.

5501. Navy: grades above chief warrant officer, W-4.
5502. Marine Corps: grades above chief warrant officer, W-4.
5503. Navy and Marine Corps: warrant officer grades.
[5504. Lineal lists: maintenance.
[5505. Reserve officers: change of lineal position]
5506. Naval Reserve and Marine Corps Reserve; officers: precedence.
[5507. Rear admirals: determination of upper half.]
5508. Rank of line and staff corps officers of the Navy and officers of the Marine Corps.

§ 5501. Navy: grades above chief warrant officer, W-4

[(a) The commissioned grades in the Navy above the grade of chief warrant officer, W-4, are:

[(1) Admiral.
[(2) Vice admiral.
[(3) Rear admiral.
[(4) Captain.
[(5) Commander.
[(6) Lieutenant commander.
[(7) Lieutenant.
[(8) Lieutenant (junior grade)
[(9) Ensign.]

The commissioned grades in the Navy above the grade of chief warrant officer, W-4, are the following:

(1) Admiral.
(2) Vice admiral.
(3) Rear admiral.
(4) Commodore admiral.
(5) Captain.
(6) Commander.
(7) Lieutenant commander.
(8) Lieutenant.
(9) Lieutenant (junior grade).
(10) Ensign.

[(b) In addition to the grades listed in subsection (a), there is also the grade of commodore. Appointments in this grade may be made under section 5597 or section 5787 of this title. Officers in the grade of commodore rank next above officers in the grade of captain.

[(c) Officers having the grade or rank of rear admiral who are entitled to the basic pay and allowances of a rear admiral of the upper half rank above officers in the grade of rear admiral who are entitled to the pay and allowances of a rear admiral of the lower half.]

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[§ 5504. Lineal lists: maintenance

[(a) The Secretary of the Navy shall maintain a single lineal list of officers in the line of the Navy on active duty in the grade of ensign and above. Line officers shall be carried on this list in the order of seniority of the grades in which they are serving. Officers serving in the same grade shall be carried on the order of their dates of rank in that grade. Officers serving in the same grade and having the same date of rank in that grade shall be carried in the order of their seniority.

[(b) The Secretary shall maintain a single lineal list of officers of the Marine Corps on active duty in the grade of second lieutenant and above. Officers of the Marine Corps shall be carried on this list in the order of seniority of the grades in which they are serving. Officers serving in the same grade shall be carried in the order of their dates of rank in that grade. Officers serving in the same grade and having the same date of rank in that grade shall be carried in the order to their seniority.

[(c) The Secretary shall maintain for each staff corps a single lineal list of officers in that corps on active duty. Staff corps officers serving in the grade of lieutenant (junior grade) or above shall be carried on the lineal lists for their respective corps in the order in which their running mates are carried on the lineal list for officers in the line. Staff corps officers serving in the grade of ensign shall be carried on the lineal lists for their respective corps in the order of their dates of rank in that grade. Staff corps officers serving in the grade of ensign and having the same date of rank in that grade shall be carried on the lineal lists for their respective corps in the order of their seniority.

[(d) For the purpose of this section, each officer serving in a grade to which he was appointed under section 5597 or promoted under section 5787 or 5787d of this title is considered as serving in the grade he would hold if he has not been so appointed or promoted.

[(e) Each officer serving in the grade of admiral, vice admiral, general or lieutenant general has, upon the termination of his appointment in that grade, the grade and position on the lineal list that he would hold if he had not received such an appointment.

[(f) Except as provided in subsection (g), an officer's rank among officers on the same lineal list is determined by his position on that list.

[(g) An officer who is appointed to an office the incumbent of which, regardless of his grade and date of rank in grade, is entitled to the rank of rear admiral with pay of the upper half or to the rank of major general shall be carried on the appropriate lineal list in the position he would have if he has not been so appointed. However, his rank among other officers holding the grade or serving with the rank of rear admiral or major general is determined by the date of his appointment to the office to which the rank of rear admiral with pay of the upper half or major general is attached, rather than by his position on the lineal list, unless his position on the list entitles him to higher rank.

[(h) Persons appointed in the grade of ensign in the Navy or second lieutenant in the Marine Corps under section 2106, 2107, 5573, or 6909 of this title shall be placed on the appropriate lineal lists. The initial position on a lineal list of officers having the same date of rank shall be determined by the Secretary in accordance with their demonstrated performance regardless of the source from which procured, giving consideration to whatever differences exist in the methods of assigning grades among the various educational institutions at which the officers have been educated.

[(i) Each officer appointed under section 5584, or 5586 of this title shall be placed on the appropriate lineal list after the junior officer of the same grade.

[(j) Officers of the Naval Reserve and the Marine Crops Reserve when ordered to active duty, shall be placed on the appropriate lineal list among officers in the same grade in accordance with their dates of rank. The position of each such reserve officer among officers having the same date of rank as himself is as determined by the Secretary.

[(k) There shall be excluded from the lineal lists under this section the following:

[(1) Retired officers.

[(2) Retired enlisted members and members of the Fleet Reserve and the Fleet Marine Corps Reserve on active duty serving under temporary appointments under section 5597 of this title.

[(3) Each temporary officer whose only appointment to a grade above chief warrant officer, W-4, is an appointment under section 5597 of this title for a period of limited duration.

[(4) Officers of the Naval Reserve and the Marine Corps Reserve assigned to active duty for training, ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve or the Marine Corps Reserve, or ordered to temporary active duty to prosecute special work.

[(5) Women officers appointed under section 5590 of this title.

[(6) Women reserve officers, other than reserve officers in the Nurse Corps and other than reserve officers appointed under section 5581 of this title.

[§ 5505. Reserve officers: change of lineal position

[(a) Notwithstanding any other provisions of law, the Secretary of the Navy may change the position on the lineal list of any officer of the Naval Reserve or the Marine Corps Reserve to equalize his opportunities for promotion with officers of the Regular Navy or the Regular Marine Corps.

[(b) Any officer whose lineal position is changed under this section may be appointed in the same or the next higher grade but not above that of captain in the Navy or colonel in the Marine Corps, and his date of rank may be changed to conform with his new lineal position. The authorized number of officers in any grade may be temporarily exceeded, until the next succeeding computation, by the number of officers advanced to that grade under this section.

[(d) Any officer of the Naval Reserve or Marine Corps Reserve who is selected for participation in a personnel procurement program under which he will be ordered to active duty for at least one academic year at a civilian school or college may, upon his request, be ordered to that duty in a temporary grade that is lower than his permanent or temporary grade, without affecting his permanent or temporary grade.]

§ 5506. Naval Reserve and Marine Corps Reserve; officers: precedence

[Officers] *Subject to section 741 of this title, officers* in an active status in the Naval Reserve in each grade and officers in an active status in the Marine Corps Reserve in each grade rank among themselves and among officers of the same grade in the Regular Navy and the Regular Marine Corps, respectively, in accordance with the dates of rank stated in their commissions. [When] *Subject to section 741 of this title, when* regular and reserve officers are in the same grade and have the same date of rank, they rank among themselves as the Secretary of the Navy determines.

§ 5508. Rank of line and staff corps officers of the Navy and officers of the Marine Corps

[(a)] Except for an officer entitled to a rank higher than his grade, line and staff corps officers of the Navy serving in the same grade and officers of the Marine Corps serving in the corresponding grade rank among themselves according to their respective dates of rank in grade, whether or not they are on [a lineal] *an active-duty* list. [A staff corps officer with the same date of rank as his running mate ranks above all line and staff corps officers junior to his running mate.

[(b) Except as provided in subsection (a), officers of the Navy on active duty serving in the same grade and having the same date of rank in that grade rank in the following order:

[(1) Officers in the line.
[(2) Officers in the Medical Corps.
[(3) Officers in the Supply Corps.
[(4) Officers in the Chaplain Corps.
[(5) Officers in the Civil Engineer Corps.
[(6) Officers in the Judge Advocate General's Corps.
[(7) Officers in the Dental Corps.
[(8) Officers in the Medical Service Corps.
[(9) Officers in the Nurse Corps.]

CHAPTER 539—ORIGINAL APPOINTMENTS

Sec.
[5571. Regular Navy and Regular Marine Corps: citizenship of officers.
[5572. Regular Navy and Regular Marine Corps: appointing power.
[5573. Regular Navy and Regular Marine Corps: from graduates of the Naval Academy.]

5573a. Regular Navy and Regular Marine Corps: from reserve and temporary officers.
[5574. Regular Navy: Medical Corps.
[5575. Regular Navy: Supply Corps.
[5576. Regular Navy: Chaplain Corps.
[5577. Regular Navy: Civil Engineer Corps.
[5578. Regular Navy: Dental Corps.
[5578a. Regular Navy: Judge Advocate General's Corps.
[5579. Regular Navy: Medical Service Corps.
[5580. Regular Navy: Nurse Corps.
[5581. Naval Reserve: Medical Corps, Dental Corps, Medical Service Corps: women.]
5582. Regular Navy: transfers, line and staff corps.
[5583. Regular Marine Corps: from noncommissioned officers.
[5584. Regular Marine Corps: from former officers.]
5585. Regular Marine Corps: order of filing vacancies in grade of second lieutenant.
[5586. Regular Navy and Regular Marine Corps: from warrant officers and enlisted members.]
5587. Regular Navy: officers designated for engineering duty, aeronautical engineering duty, and special duty.
5587a. Regular Marine Corps: Judge advocates.
5589. Regular Navy and Regular Marine Corps: officers designated for limited duty.
5590. Regular Navy and Regular Marine Corps: women.
5591. Regular Navy: Supply Corps: maximum number of ensigns appointed annually.
5592. Regular Navy: Civil Engineer Corps: maximum number of ensigns appointed annually.
5593. Regular Navy: Medical Service Corps: maximum number of ensigns appointed annually.
5594. Regular Navy: Nurse Corps: maximum number of ensigns appointed annually.
5595. Regular Marine Corps: restriction on appointments of former midshipmen and cadets.
5596. Navy and Marine Corps: temporary appointments.
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[§ 5571. Regular Navy and Regular Marine Corps: citizenship of officers

[To be eligible to hold an appointment as an officer in the Regular Navy or the Regular Marine Corps a person must be a citizen of the United States.

[§ 5572. Regular Navy and Regular Marine Corps: appointing power

[Except as provided in section 5573a of this title, each appointment to the active list of the Navy or to the active list of the Marine Corps shall be made by the President, by and with the advice and consent of the Senate.

[§ 5573. Regular Navy and Regular Marine Corps: from graduates of the Naval Academy

[(a) Upon graduation from the Naval Academy, a midshipman may be appointed—

[(1) an ensign on the active list of the Navy in the line or in an appropriate staff corps; or

[(2) a second lieutenant on the active list of the Marine Corps.

An appointment under this section is effective from the date of graduation of the appointee.

[(b) Appointments may be made in the line of the Navy under this section irrespective of vacancies, and the authorized strength of the active list of the Navy in line officers may be temporarily exceeded by the number of these apppointees in excess. The number of officers in excess shall be excluded from any computation made for the purpose of determining the number of line officers prescribed for any grade. Appointments in the Marine Corps or in a staff corps under this section may be made only to fill vacancies.

[§ 5573a. Regular Navy and Regular Marine Corps: from reserve and temporary officers

[(a) Appointments to the active list of the Navy in permanent grades not above lieutenant and to the active list of the Marine Corps in permanent grades not above captain may be made from officers of the Naval Reserve or the Marine Corps Reserve and from officers of the Regular Navy or the Regular Marine Corps who do not hold permanent commissioned appointments therein.

[(b) Appointments under subsection (a) shall be made by the President alone under regulations to be prescribed by him for the administration of this section. The regulations shall include provisions—

[(1) establishing standards and qualifications for appointments in each grade in which appointments are authorized by subsection (a);

[(2) for determining the lineal position of appointees; and

[(3) for assigning running mates to officers appointed in a staff corps.

[(c) To be eligible for an appointment under this section, an officer must have such qualifications as the Secretary of the Navy may prescribe.

[(d) An officer may not be appointed to the active list of the Navy or the Marine Corps under this section in a permanent grade higher than the grade in which he is serving at the time of that appointment. However, an officer appointed in a permanent grade under this section may also be temporarily appointed to a higher grade appropriate to the lineal position assigned to him. Such a temporary appointment shall be considered to have been made under the provisions of law under which officers having a comparable lineal position on the active list of the Navy or the Marine Corps, as the case may be, were temporarily promoted to the higher grade.

[(e) An officer who, at the time of his appointment under this section, has to his credit leave accrued but not taken does not lose that accrued leave because of that appointment.

[§ 5574. Regular Navy: Medical Corps

[(a) Original appointments to the active list of the Navy in the Medical Corps may be made from persons who—

[(1) Are at least 21 and under 32 years of age; and

[(2) are examined and found qualified by a board of officers in the Medical Corps convened by the Secretary of the Navy.
Appointments under this subsection shall be in the grade of lieutenant (junior grade).

[(b) Under such regulations as the Secretary may prescribe, original appointments to the active list of the Navy in the Medical Corps may also be made, as the needs of the service require, from—

[(1) doctors of medicine who have such qualifications as the Secretary may prescribe; and

[(2) doctors of osteopathy who are qualified under subsection (c) and who have such other qualifications as the Secretary may prescribe.

Appointments under this subsection may be in the grades of lieutenant (junior grade) through captain.

[(c) To be eligible for appointment in the Medical Corps under subsection (b), a doctor of osteopathy must—

[(1) be a graduate of a college of osteopathy whose graduates are eligible to be licensed to practice medicine or surgery in a majority of the States.

[(2) be licensed to practice medicine, surgery, or osteopathy in a State or Territory or in the District of Columbia;

[(3) under regulations to be prescribed by the Secretary of Defense, have completed a number of years of osteopathic and preosteopathic education equal to the number of years of medical and premedical education prescribed for persons entering recognized schools of medicine who become doctors of medicine and who would be qualified for appointment under this section in the grade for which that person is applying; and

[(4) have such other qualifications as the Secretary of the Navy prescribes after considering the recommendation, if any, of the Chief of the Bureau of Medicine and Surgery.

[(d) For the purposes of determining lineal position, permanent grade seniority in permanent grade, and eligibility for promotion, an officer appointed under subsection (b) shall be credited with the amount of service prescribed by the Secretary, but not less than four years. However, an officer who has completed an internship of one year, or the equivalent, may not be credited with less than five years.

[5575. Regular Navy: Supply Corps

[Original appointments to the active list of the Navy in the Supply Corps may be made from male persons who—

[(1) are at least 21 years of age on July 1 of the calendar year in which appointed; and

[(2) have physical, mental, and moral qualifications satisfactory to the Secretary of the Navy.

[§ 5576. Regular Navy: Chaplain Corps

[Original appointments to the active list of the Navy in the Chaplain Corps may be made from male persons who—

[(1) are at least 21 and under 35 years of age; and

[(2) have physical, mental, moral, and professional qualifications satisfactory to the Secretary of the Navy.

Appointments under this section shall be in the grade of lieutenant (junior grade).

[§ 5577. Regular Navy: Civil Engineer Corps

[Original appointments to the active list of the Navy in the Civil Engineer Corps may be made from male persons. Appointments under this section may be either in the grade of ensign or in the grade of lieutenant (junior grade) in accordance with such regulations as the Secretary of the Navy prescribes.

[§ 5578. Regular Navy: Dental Corps

[(a) Original appointments to the active list of the Navy in the Dental Corps may be made from person who—

[(1) are at least 21 and under 32 years of age;

[(2) are graduates of accredited medical or dental schools and are trained in the several branches of dentistry; and

[(3) have passed physical, mental, moral, and professional examinations before boards convened by the Secretary of the Navy and have been recommended for appointment by those boards.

Appointments under this subsection shall be in the grade of lieutenant (junior grade).

[(b) Under such regulations as the Secretary may prescribe, original appointments to the active list of the Navy in the Dental Corps may also be made, as the needs of the service require, from doctors of dentistry who have such qualifications as the Secretary may prescribe. Appointments under this subsection may be in the grades of lieutenant (junior grade) through captain.

[(c) For the purposes of determining lineal position, permanent grade, seniority in permanent grade, and eligibility for promotion, an officer appointed in the Dental Corps under subsection (b) shall be credited with the amount of service prescribed by the Secretary, but not less than four years.

[§ 5578a. Regular Navy; Judge Advocate General's Corps

[(a) Original appointments to the active list of the Navy in the Judge Advocate General's Corps may be made from persons who—

[(1) are at least twenty-one and under thirty-five years of age;

[(2) are graduates of an accredited law school or are members of the bar of a Federal court or the highest court of a State; and

[(3) have physical, mental, and moral qualifications satisfactory to the Secretary of the Navy.

For the purposes of determining lineal position, permanent grade, seniority in permanent grade, and eligibility for promotion, an officer appointed in the Judge Advocate General's Corps shall be credited with the amount of service prescribed by the Secretary of the Navy, but not less than three years.

[(b) Under such regulations as the Secretary of the Navy may prescribe, appointments to the active list of the Navy in the Judge Advocate General's Corps may be made from officers of the Navy, including the Naval Reserve, in the line or in another staff corps. Notwithstanding any other law, an officer appointed under this subsection shall have a running mate assigned to him under regulations to be prescribed by the Secretary of the Navy.

[§ 5579. Regular Navy: Medical Service Corps

[(a) Under such regulations as the Secretary of the Navy prescribes, original appointments to the active list of the Navy in the Medical Service Corps may be made from persons who—

[(1) are at least 21 and under 32 years of age; and

[(2) have physical, mental, moral, and professional qualifications satisfactory to the Secretary.

[(b) Appointments under this section from persons other than members of the Regular Navy shall be made from graduates of accredited schools of pharmacy, optometry, or other schools or colleges with degrees in sciences allied to medicine or degrees approved by the Surgeon General of the Navy.

[(c) Appointments under this section shall be in the grade of ensign, except that persons holding doctoral degrees at the time of appointment in sciences allied to medicine approved by the Surgeon General may be appointed in the grade of lieutenant (junior grade).

[(d) An officer appointed under this section from the Regular Navy may not suffer any reduction in the pay and allowances to which he was entitled at the time of his appointment because of his former permanent status.

[§ 5580. Regular Navy: Nurse Corps

[(a) Original appointments to the active list of the Navy in the Nurse Corps may be made from persons who are at least 21 years of age on July 1 of the calendar year in which appointed and who have physical, mental, moral, educational, and professional qualifications satisfactory to the Secretary of the Navy.

[(b) A person appointed under this section shall be appointed in the grade of—

[(1) ensign, if the person has not reached the age of 27 on the date of nomination by the President and is not qualified for appointment as a lieutenant (junior grade) under clause (2); or

[(2) lieutenant (junior grade), if the person is qualified under regulations prescribed by the Secretary and has not reached the age of 30 on the date of nomination by the President.

[(c) The maximum ages specified in subsection (b) are increased by the period of active commissioned service performed after December 31, 1947. However, a maximum age is not so increased by more than five years.

[§ 5581. Navy Reserve: Medical Corps, Dental Corps, Medical Service Corps: women

[Women may be appointed in the Naval Reserve in the Medical Corps, the Judge Advocate General's Corps, the Dental Corps, and the Medical Service Corps. Except as otherwise specifically provided, provisions of this title relating to male officers of the Naval Reserve in these corps apply to women appointed under this section.]

§ 5582. Regular Navy: transfers, line and staff corps

[(a) Any male officer on the active list of the Navy in a staff corps in a grade not above lieutenant commander may be appointed to the active list in the line of the Navy in the same grade. An officer so appointed holds the lineal position he would have held if he had originally been appointed in and had remained in the line, and he is an additional number in the grade in which he is serving and in each grade to which he is later promoted.

[(b) Any male officer on the active list in the line of the Navy in a grade not above lieutenant commander may be appointed to the active list of the Navy in the Supply Corps or the Civil Engineer Corps, in the same grade, without regard to his age.]

(a) A regular officer of the Navy in a staff corps in a grade not above lieutenant commander may be appointed in the line of the Navy to the same grade.

(b) A regular officer in the line of the Navy in a grade not above lieutenant commander may be appointed to the same grade in a staff corps under regulations prescribed by the Secretary of Defense.

[§ 5583. Regular Marine Corps: from noncommissioned officers

[Original appointments to the active list of the Marine Corps may be made from meritorious male noncommissioned officers of the Regular Marine Corps who are at least 20 and under 30 years of age. Appointments under this section shall be in the grade of second lieutenant.

[§ 5584. Regular Marine Corps: from former officers

[(a) Original appointments to the active list of the Marine Corps in the grade of second lieutenant may be made from male former officers of the Marine Corps who resigned from the naval service in good standing.

[(b) To be eligible for an appointment under this section a person must—

[(1) establish his physical, mental, moral, and professional qualifications to perform the duties of the grade of second lieutenant to the satisfaction of the Secretary of the Navy; and

[(2) be of such an age that he can complete a total of 30 years of active service before he becomes 62 years of age.

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[§ 5586. Regular Navy and Regular Marine Corps: from warrant officers and enlisted members

[(a) Original appointments may be made—

[(1) to the active list of the Navy in the line or in any staff corps, except the Medical Service Corps and the Nurse Corps, in grades not above lieutenant from male warrant officers and chief petty officers of the Regular Navy who, by June 30 of the calendar year in which appointed, will have completed at least three years of service in the Regular Navy in the grade of chief petty officer or above; and

[(2) to the active list of the Marine Corps in grades not above captain from male warrant officers of the Regular Marine Corps who, by June 30 of the calendar year in which appointed, will have completed at least three years of service in the Regular Marine Corps in the grade of warrant officer, W-1, or above.

To be eligible for appointment under this subsection to the grade of lieutenant, lieutenant (junior grade), or ensign on the active list of the Navy or captain, first lieutenant, or second lieutenant on the active list of the Marine Corps, members must be under 40, 35, and 32 years of age, respectively, on June 29, of the calendar year in which they are to be appointed.

[(b) Original appointments to the active list of the Navy in the line and in any appropriate staff corps in the grade of ensign may be made from male enlisted members of the Regular Navy. To be eligible for such an appointment a member must be under 33 years of age on the date of appointment and must have had at least four years of continuous service, immediately preceding the date of his appointment, in the Regular Navy.

[(c) Before he may be appointed under this section, a member must apply for appointment, must be recommended by a commanding officer under whom he has served in the grade he holds at the time he applies, and, under regulations prescribed by the Secretary of the Navy, must establish his qualifications by—

[(1) recommendation of a naval examining board that he is mentally, morally, and professionally qualified; and

[(2) finding of a board of medical examiners that he is physically qualified.

A member who twice fails to establish his qualifications is ineligible for appointment under this section.

[(d) Each appointment under subsection (a) shall be in the grade for which the member applies and for which he is found qualified.

[(e) Each officer appointed under this section in the grade of lieutenant in the line of the Navy or in the grade of captain in the Marine Corps is an additional number in that grade only and, while in that grade, becomes eligible for consideration for promotion when the officer next senior to him becomes eligible.

[(f) An officer appointed under this section may not suffer any reduction in the pay and allowances to which he was entitled at the time of his appointment because of his former status.]

§5587. Regular Navy: officers designated for engineering duty, aeronautical engineering duty, and special duty

[(a) Male persons may be originally appointed to the active list in the line of the Navy as officers designated for engineering duty, aeronautical engineering duty, or special duty. Each person so appointed shall be appointed in the grade of—

[(1) ensign, if designated for engineering duty, aeronautical engineering duty, or any type of special duty for which a graduate degree is not required; or

[(2) lieutenant (junior grade), if designated for a type of special duty for which a graduate degree is required.

The number of appointments in each of these grades and designations may not exceed, in any fiscal year, the number of vacancies that the Secretary of the Navy estimates will occur in the fiscal year for officers of the grade and designation concerned.]

(a) Persons may be originally appointed in the line of the Navy as regular officers designated for engineering duty, aeronautical engineering duty, or special duty.

(b) With the approval of the Secretary, [any officer on the active list] *a regular officer* in the line of the Navy may, upon his application, be designated for engineering duty, aeronautical engineering duty, or special duty.

(c) The types of engineering duty for which officers may be designated include ship engineering and ordnance engineering. The types of aeronautical engineering duty for which officers may be designated include aeronautical engineering and aviation maintenance. The types of special duty for which officers may be designated include communications, law, naval intelligence, photography, [public information, psychology,] *public affairs, psychology, geophysics, cryptography,* and hydrography.

(d) Officers designated for engineering duty, aeronautical engineering duty, or special duty [are additional numbers in grade. They] shall perform sea or shore duty appropriate to their special qualifications but may not succeed to command except on shore and then only as authorized by the Secretary.

§5587a. Regular Marine Corps: judge advocates

(a) With the approval of the Secretary of the Navy, any *regular* officer on the active list of the Marine Corps who is qualified under section 827(b) of this title may, upon his application, be designated as a judge advocate.

(b) For the purposes of determining lineal position, permanent grade, seniority in permanent grade, and eligibility for promotion, a person appointed to the active list of the Marine Corps with a view to designation as a judge advocate may be credited with the amount of service prescribed by the Secretary of the Navy, but not more than three years.

§5589. Regular Navy and Regular Marine Corps: officers designated for limited duty

[(a) Original appointments to the active list of the Navy in the grade of ensign in the line, in the Supply Corps, and in the Civil Engineer Corps may be made from male—]

(a) Original appointments as regular officers of the Navy in a grade below lieutenant commander in the line and in staff corps established by the Secretary of the Navy under section 5155(b) of this title and designated by the Secretary for the purposes of this section may be made from—

(1) warrant officers;
(2) chief petty officers; and
(3) first-class petty officers;

in the Regular Navy, for the performance of duty in the technical fields indicated by their warrants or ratings.

[(b) Original appointments to the active list of the Marine Corps in the grade of second lieutenant may be made from male—]

(b) Original appointments as regular officers of the Marine Corps in a grade below major may be made from—

(1) warrant officers;
(2) master sergeants; and
(3) technical sergeants;

in the Regular Marine Corps, for the performance of duty in the technical fields in which they are proficient.

(c) To be eligible for an appointment under this section a member must have *the qualifications specified in section 532(a) of this title and have* completed at least 10 years of active naval service, excluding active duty for training in a reserve component.

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[§ 5590. Regular Navy and Regular Marine Corps: women

[(a) Women may be appointed to the active list of the Navy in the line or in any staff corps or to the active list of the Marine Corps. Except as provided in subsection (b), original appointments under this section shall be made under the same conditions as prescribed in other sections of this title for appointments under those sections.

[(b) Original appointments to the active list of the Navy under this section shall be either in the grade of ensign or in the grade of lieutenant (junior grade) in the discretion of the President, and original appointments to the active list of the Marine Corps shall be either in the grade of second lieutenant in the discretion of the President. To be eligible for such an appointment a woman must—

[(1) be at least 21 and under 30 years of age on July 1, of the year in which appointed; and

[(2) have mental, moral, educational, professional, and physical qualifications satisfactory to the Secretary of the Navy.

[(c) This section does not authorize the appointment of officers in the Nurse Corps.

[§ 5591. Regular Navy: Supply Corps: maximum number of ensigns appointed annually

[(a) Subject to subsection (b), the maximum number of appointments that may be made in any year to the active list of the Navy in the Supply Corps in the grade of ensign is equal to 12 percent of the number of appointments made that year to the active list in the line in the grade of ensign.

[(b) If, in any year, the number of officers on the active list in the Supply Corps is less than 12 percent of the number of officers on the active list in the line, the number of appointments in that year to the active list in the Supply Corps in the grade of ensign may be increased as the President determines necessary, so long as that percentage is not exceeded.

[§ 5592. Regular Navy: Civil Engineer Corps: maximum number of ensigns appointed annually

[(a) Subject to subsection (b), the maximum number of appointments that may be made in any year to the active list of the Navy in the Civil Engineer Corps in the grade of ensign is equal to 3 percent of the number of appointments made that year to the active list in the line in the grade of ensign.

[(b) If, in any year, the number of officers on the active list in the Civil Engineer Corps is less than 3 percent of the number of officers on the active list in the line, the number of appointments in that year to the active list in the Civil Engineer Corps in the grade of ensign may be increased as the President determines necessary, so long as that percentage is not exceeded.

[§ 5593. Regular Navy: Medical Service Corps: maximum number of ensigns appointed annually

[(a) Subject to subsection (b), the maximum number of appointments that may be made in any year to the active list of the Navy in the Medical Service Corps in the grade of ensign is the same percentage of the number of appointments made in that year to the active list in the line in the grade of ensign as the authorized number of officers on the active list in the Medical Service Corps in that year is of the authorized number of officers on the active list in the line.

[(b) If, in any year, the ratio of the number of officers on the active list in the Medical Service Corps to the number of officers on the active list in the line is less than the ratio of the number of officers authorized to be on the active list in the Medical Service Corps in that year to the number of officers authorized to be on the active list in the line, the number of appointments in that year to the active list in the Medical Service Corps in the grade of ensign may be increased as the President determines necessary to meet the needs of the service, not to exceed the number required to equalize these ratios.

[§ 5594. Regular Navy: Nurse Corps: maximum number of ensigns appointed annually

[(a) Subject to subsection (b), the maximum number of appointments that may be made in any year to the active list of the Navy in the Nurse Corps in the grade of ensign is the same percentage of the number of appointments made in that year to the active list in the line in the grade of ensign as the authorized number of officers on the active list in the Nurse Corps in that year is of the authorized number of officers on the active list in the line.

[(b) If, in any year, the ratio of the number of officers on the active list in the Nurse Corps to the number of officers on the active list in the line is less than the ratio of the number of officers authorized to be on the active list in the Nurse Corps in that year to the number of officers authorized to be on the active list in the line, the number of appointments in that year to the active list in the Nurse Corps in the grade of ensign may be increased as the President determines necessary to meet the needs of the service, not to exceed the number required to equalize these ratios.

[§ 5595. Regular Marine Corps: restriction on appointments of former midshipmen and cadets

[No person who was a midshipman at the United States Naval Academy or who was a cadet at the United States Military Academy may be appointed in a commissioned grade in the Regular Marine Corps until after the graduation of the class of which he was a member.

[§ 5596. Navy and Marine Corps: temporary appointments

[(a) Temporary appointments may be made under this section only when the number of male officers serving on active duty in the grade of ensign and above in the line of the Navy exceeds the number of male officers on the active list in the line of the Navy. Offiers in a category covered by subsection (g) are not considered as officers on active duty for the purpose of this section.

[(b) Temporary appointments in the Regular Navy, except in the Nurse Corps, in grades not above lieutenant and in the Regular Marine Corps in grades not above captain may be made from—

[(1) warrant officers of the Regular Navy and the Regular Marine Corps, respectively; and

[(2) chief and first-class petty officers of the Regular Navy and master, technical, and staff sergeants of the Regular Marine Corps, respectively.

[(c) Temporary appointments in the Naval Reserve, except in the Nurse Corps, in grades not above lieutenant and in the Marine Corps Reserve in grades not above captain may be made from—

[(1) warrant officers of the Naval Reserve and the Marine Corps Reserve, respectively, on active duty; and

[(2) chief and first-class petty officers of the Naval Reserve and master, technical, and staff sergeants of the Marine Corps Reserve, respectively, on active duty.

[(d) Temporary appointments in warrant officer grades under this section shall be made by the Secretary of the Navy under such regulations as he prescribes. Such appointments shall be made by warrant if in the grade of warrant officer, W-1, or by commission if in a higher warrant officer grade.

[(e) The number of persons appointed in the Regular Navy under this section in grades above chief warrant officer, W-4, may not exceed the difference between the actual number of officers on the active list of the Navy in the line or in the staff corps concerned and the authorized number of such officers. The number of persons so appointed in the Regular Marine Corps under this section in grades above chief warrant officer, W-4, may not exceed the differene between the actual number of officers on the active list of the Marine Corps and the authorized number of such officers.

[(f) Temporary appointments under this section do not change the permanent, probationary, or acting status of members so appointed, prejudice them in regard to promotion or appointment, or abridge their rights or benefits. A person receiving a temporary appointment under this section may not suffer any reduction in the pay and allowances to which he was entitled because of his permanent status at the time of his temporary appointment, or any reduction in the pay and allowances to which he was entitled under a prior temporary appointment in a lower grade.

[(g) The following members of the naval service are ineligible for temporary appointments under this section:

[(1) Women members.

[(2) Retired members.

[(3) Members of the Naval Reserve and the Marine Corps Reserve ordered to active duty for training.

[(4) Members of the Naval Reserve and the Marine Corps Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve or the Marine Corps Reserve.

[(5) Members of the Naval Reserve and the Marine Corps Reserve ordered to temporary active duty to prosecute special work.

[(h) The President may terminate any appointment made under this section.]

§ [*5596. Navy and Marine Corps: temporary appointments of warrant officers and officers designated for limited duty*

(a) Under such regulations as he may prescribe, the Secretary of the Navy may make temporary appointments—

(1) in warrant officer grades; and

(2) of officers designated for limited duty in the Regular Navy in grades not above lieutenant and in the Regular Marine Corps in grades not above captain from sources authorized under section 5589 of this title.

Such appointments shall be made by warrant if in the grade of warrant officer, W–1, and by commission if in a higher grade.

(b) Temporary appointments under this section do not change the permanent, probationary, or acting status of members so appointed, prejudice them in regard to promotion or appointment, or abridge their rights or benefits. A person receiving a temporary appointment under this section may not suffer any reduction in the pay and allowances to which he was entitled because of his permanent status at the time of his temporary appointment, or any reduction in the pay and allowances to which he was entitled under a prior temporary appointment in a lower grade.

(c) The following members of the naval service are ineligible for temporary appointments under this section:

(1) Retired members.

(2) Members of the Naval Reserve and the Marine Corps Reserve ordered to active duty for training.

(3) Members of the Naval Reserve and the Marine Corps Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve or the Marine Corps Reserve.

(4) Members of the Naval Reserve and the Marine Corps Reserve ordered to temporary active duty to prosecute special work.

(d) Officers designated for limited duty under subsection (a)(2) may be temporarily promoted to a higher grade not above commander in the Regular Navy or lieutenant colonel in the Regular Marine Corps under such regulations as the Secretary of the Navy may prescribe. Regulations prescribed under this section shall to the greatest extent practicable conform to the procedures prescribed in chapter 36 of this title for selection for promotion and promotion to higher permanent grades.

(e) The Secretary of the Navy may terminate any appointment made under this section.

[§ 5597. Navy and Marine Corps: temporary appointments in time of war or national emergency

[(a) Temporary appointments may be made under this section only in time of war or during a national emergency declared by the President.

[(b) Temporary appointments in the Regular Navy in grades not above lieutenant and in the Regular Marine Corps in grades not above captain may be made from—

[(1) warrant officers of the Regular Navy and the Regular Marine Corps, respectively, including retired members on active duty;

[(2) chief and first-class petty officers of the Regular Navy and master, technical, and staff sergeants of the Regular Marine Corps, respectively, including retired members on active duty; and

[(3) chief and first-class petty officers of the Fleet Reserve and master, technical, and staff sergeants of the Fleets Marine Corps Reserve, respectively, on active duty.

[(c) Temporary appointments in the Naval Reserve in grades not above lieutenant and in the Marine Corps Reserve in grades not above captain may be made from—

[(1) warrant officers of the Naval Reserve and the Marine Corps Reserve, respectively, on active duty; and

[(2) chief and first-class petty officers of the Naval Reserve and master, technical, and staff sergeants of the Marine Corps Reserve, respectively, on active duty.

[(d) Temporary appointments in warrant officer grades under this section shall be made by the Secretary of the Navy under such regulations as he prescribes. Such appointments shall be made by warrant if in the grade of warrant officer, W-1, or by commission if in a higher warrant officer grade.

[(e) Temporary appointments under this section in grades above chief warrant officer, W-4, shall be made under regulations prescribed by the President and in such numbers as he determines the needs of the service require. Such appointments shall be made by the President alone, except that appointments under subsections (f) and (g) in grades above lieutenant commander in the Navy shall be made by the President, by and with the advice and consent of the Senate. The grade of commodore is established for the purposes of subsections (f) and (g).

[(f) Temporary appointments in a staff corps and in the line or in a different staff corps of the Regular Navy may be made from retired officers of the Regular Navy in the line and staff corps, respectively, who are on active duty. Each officer appointed under this subsection shall be appointed in the grade in which he was serving at the time of appointment.

[(g) Temporary appointments in a staff corps and in the line or in a different staff corps of the Naval Reserve may be made from retired officers of the Naval Reserve in the line and staff corps, respectively, who are on active duty. Each officer appointed under this subsection shall be appointed in the grade in which he was serving at the time of appointment.

[(h) Temporary appointments under this section do not change the permanent, probationary, or acting status of members so appointed, prejudice them in regard to promotion or appointment, or abridge their rights or benefits.

[(i) Each temporary appointment under this section, unless expressly declined, is without formal acceptance or oath of office, regarded as accepted on the date made.

[(j) Temporary appointments under this section are effective for such periods as the President determines. However, no such appointment may be effective later than—

[(1) six months after the end of the war or national emergency; or

[(2) the date the appointee is released from active duty;

whichever is earlier.

[(k) When his temporary appointment under this section is terminated, each member of the naval service on active duty shall have the grade he would hold if he had not received any such appointment.

§ 5598. Naval Reserve and Marine Corps Reserve: temporary appointments in time of war or national emergency

[(a) In time of national emergency declared by the President or by Congress, and in time of war, temporary appointments may be made in any commissioned grade in the Naval Reserve or the Marine Corps Reserve from qualified persons.

[(b) Appointments under this section in the grades of chief warrant officer, W-2, chief warrant officer, W-3, and chief warrant officer, W-4, shall be made by the Secretary of the Navy, by commission, under such regulations as he prescribes.

[(c) An officer appointed under this section may be ordered to active duty for such period as the President prescribes.

[(d) An appointment under this section may be vacated by the President at any time. Unless sooner vacated, the appointment is effective during the war or emergency in which it is made and for six months thereafter.

[(e) The appointment of a permanent warrant officer to a higher grade under this section does not vacate his permanent grade or prejudice any right, privilege, benefit, or promotion status to which he was entitled because of his permanent grade.

§ 5599. Medical Corps: acting appointments for temporary service

[(a) Appointments for temporary service in the Medical Corps in the grade of lieutenant (junior grade) may be made by the President alone.

[(b) Appointees under this section may not be placed on the lineal list, may not be assigned running mates, and are ineligible for promotions. The number of such appointess may not be more than 250 at any time, except that in time of war or declared national emergency the number may be increased by the President as he considers necessary to meet the needs of the naval service.]

§ 5600. Naval Reserve and Marine Corps Reserve: service credit upon original appointment

[(a) For the purpose of determining his grade and lineal position, a person may be credited, at the time of his original appointment as an officer of the Naval Reserve or the Marine Corps Reserve, with an amount of service in an active status that will reflect his combined years of experience and education and such other qualifications as the Secretary of the Navy prescribes by regulations. The Secretary shall report to the Committees on Armed Services of the Senate and House of Representatives by March 1 of each year on the number, categories, and grades of reserve officers (other than in the Medical Corps or Dental Corps) originally appointed in the reserve grade of lieutenant in the Naval Reserve, or captain in the Marine Corps Reserve, or above, during the preceding calendar year.

[(b) For the purposes of this section—

[(1) a person appointed in the Naval Reserve in any of the following corps shall be credited with at least the following amounts of service in an active status:

[(A) Medical Corps—4 years;
[(B) Dental Corps—3 years;
[(C) Chaplain Corps—3 years;

[(D) Judge Advocate General's Corps—3 years;

[(2) a person who is appointed in the Naval Reserve in the Medical Service Corps, and who holds a degree of doctor of philosophy or a comparable degree in a science allied to medicine as determined by the Secretary, may be credited with at least 3 years of service in an active status.]

(a)(1) Under regulations prescribed by the Secretary of Defense, for the purpose of determining the grade, seniority in grade, and eligibility for promotion of a person who is originally appointed as a commissioned officer in a permanent grade above chief warrant officer, W-4, in the Naval Reserve or Marine Corps Reserve, such person shall be credited at the time of such appointment with any service as a commissioned officer, other than a commissioned warrant officer, that he performed in an active status in any armed force before such appointment.

(2) The Secretary of Defense shall prescribe regulations to authorize the Secretary of the Navy to limit the amount of prior commissioned service with which a person receiving an original appointment may be credited under paragraph (1), or to deny any such credit, in the case of a person who at the time of such appointment is credited with constructive service under subsection (b).

(b)(1) Under regulations prescribed by the Secretary of Defense, the Secretary of the Navy shall credit a person who is receiving an original appointment as a reserve commissioned officer in the Navy or Marine Corps and who has advanced education or training or special experience with constructive service for such education, training, or experience as follows:

(A) One year for each year of advanced education beyond the baccalaureate degree level, for persons appointed in officer categories requiring such advanced education or an advanced degree as a prerequisite for appointment as a commissioned officer. (Except as provided in clause (E), in determining the years of constructive service under this clause, the Secretary of the Navy shall grant credit for only the number of years normally required to complete the advanced education or receive the advanced degree.)

(B) Credit for any period of advanced education in a health profession (other than medicine and dentistry) beyond the baccalaureate degree level which exceeds the basic education criteria for appointment as an officer, if such advanced education will be directly used by the Navy or Marine Corps, as appropriate.

(C) Additional credit of (i) not more than one year for internship or equivalent graduate medical, dental, or other formal professional training required by the armed forces, and (ii) not more than one year for each additional year of such graduate-level training or experience creditable toward certification in a specialty required by the the Navy or Marine Corps, as appropriate.

(D) Additional credit, in unusual cases, based on special experience in a particular field.

(E) Additional credit of one year for advanced education in a health profession if the number of years of baccalaureate education completed by 75 percent or more of the students entering advanced training in that health profession exceeds, by one or

more, the minimum number of years of preprofessional education required by a majority of institutions which award degrees in that health profession. The percentage of such persons shall be computed on an annual basis for each health profession from the data for the year in which the person being appointed was admitted to a professional school. However, a person may not receive additional credit under this clause if the amount of his baccalaureate education does not exceed, by one or more, the minimum number of years of preprofessional education required by a majority of institutions which award degrees for that health profession, determined on the basis prescribed in the preceding sentence.

(F) Additional credit for experience as a physician or dentist, if appointed in the Medical or Dental Corps.

(2) Except as authorized by the Secretary of the Navy in individual cases and under regulations prescribed by the Secretary of Defense in the case of a medical or dental officer, the amount of constructive service credited an officer under this subsection may not exceed the amount required in order for the officer to be eligible for an original appointment in the grade of lieutenant commander or major.

(3) Constructive service credited an officer under this subsection is in addition to any service credited that officer under subsection (a) and shall be credited at the time of the original appointment of the officer.

(c) Constructive service may not be credited under subsection (b) for education, training, or experience obtained while serving in an active status.

(d) If the Secretary of Defense determines that the number of qualified judge advocates serving on active duty in the Navy or the Marine Corps in grades below lieutenant commander or major is critically below the number needed by the Navy or Marine Corps, respectively, in such grades, he may authorize the Secretary of the Navy to credit any person to whom this section applies who is receiving an original appointment in the Judge Advocate General's Corps of the Navy, or who is receiving an original appointment in the Marine Corps with a view to designation as a judge advocate, with a period of constructive service in such an amount (in addition to any amount credited such person under subsection (b)) as will result in the grade of such person, if ordered to active duty, being that of lieutenant, in the case of an officer of the Navy, or captain, in the case of an officer of the Marine Corps, and the date of rank of such person being junior to that of all other officers of the same grade serving on active duty in the Navy or Marine Corps, as the case may be.

[CHAPTER 541—RUNNING MATES

[Sec.
[5651. Eligibility of officers to be running mates.
[5652. Regular Navy: lieutenants (junior grade).
[5652a. Regular Navy: lieutenants (junior grade); Medical and Dental Corps.
[5652b. Regular Navy: lieutenants (junior grade) originally appointed as ensigns under section 2106, 2107, 5573, or 6909 of this title.
[5652c. Regular Navy: officers appointed from the Naval Reserve or from temporary officers.

[5653. Regular Navy: lieutenants and above.
[5654. Regular Navy: transfers from line.
[5655. Naval Reserve: officers ordered to active duty.
[5656. Reassignment: running mate separated, released, or loses numbers.
[5657. Reassignment: staff corps officer promoted.
[5658. Reassignment: staff corps officer not promoted.
[5659. Reassignment: staff corps officer loses numbers.
[5660. Reassignment: running mate advanced.
[5661. Reassignment: staff corps officer advanced.
[5662. Suspension: preceding sections.
[5663. Application: preceding sections.
[5664. Regular Navy: women staff corps officers appointed under section 5590 of this title.
[5665. Naval Reserve and Marine Corps Reserve: active status officers in permanent grades above chief warrant officer, W-4.
[5666. Appointments for limited duration not considered.

[§ 5651. Eligibility of officers to be running mates

[(a) To be eligible to be the running mate of a staff corps officer not restricted in the performance of duty, a line officer must be an officer who is not restricted in the performance of duty.

[(b) To be eligible to be the running mate of a staff corps officer designated for limited duty, a line officer must be an officer who is designated for limited duty.

[§ 5652. Regular Navy: lieutenants (junior grade)

[(a) Except as provided in sections 5652a, 5652b, 5652c, 5653, and 5654 of this title, officers serving in the grade of lieutenant (junior grade) on the active list of the Navy in each staff corps who have dates of rank in the same calendar year shall, after the end of that calendar year, have assigned to them, in the order of their lineal rank, running mates from among eligible line officers who are serving on active duty in the grade of lieutenant (junior grade) and who have dates of rank in the same calendar year as the staff corps officers.

[(b) The officer to be assigned as the running mate of a staff corps officer under this section is the eligible line officer whose numerical position in the order of lineal rank, among the line lieutenant (junior grade) on active duty having dates of rank in the same calendar year as the staff corps officer, most nearly equals the product of—

[(1) the numerical position of the staff corps officer in his order of lineal rank as determined under subsection (c) or (d); and

[(2) a fraction, of which—

[(A) the numerator is the number of line lieutenants (junior grade) on active duty having dates of rank in the same calendar year as the staff corps officer; and

[(B) the denominator is the number of lieutenants (junior grade) in the staff corps concerned who have dates of rank in the same calendar year as such staff corps officer and who are to have running mates assigned to them under this section.

However, if in any year there is only one lieutenant (junior grade) in any corps to have a running mate assigned to him under this section, the officer to be so assigned is the eligible line officer whose numerical position is nearest the middle of the line lieutenants (junior grade) on active duty having dates of rank in the same calendar year as the staff corps officer.

[(c) In each staff corps in which officers may be originally appointed either in the grade of ensign or in that of lieutenants (junior grade), all the lieutenants (junior grade) who are to have running mates assigned to them under this section at any one time are regarded, for the purpose of this section, as having lineal rank among themselves in the order recommended in the approved report of a board of officers of the corps concerned. Such boards shall be convened as soon as practicable after the end of each calendar year, and their recommendations, when approved by the Secretary of the Navy, are conclusive.

[(d) In each staff corps in which appointments in the grade of ensign are not authorized, all the lieutenants (junior grade) who are to have running mates assigned to them under this section at any one time are regarded, for the purposes of this section, as having lineal rank among themselves in the chronological order of their dates of rank.

[§ 5652a. Regular Navy: lieutenants (junior grade); Medical and Dental Corps

[An officer appointed to the active list of the Navy in the grade of lieutenant (junior grade) in the Medical Corps, the Judge Advocate General's Corps, or the Dental Corps shall have assigned as his running mate the junior eligible line officer serving on active duty in the grade of lieutenant (junior grade) with the same date of rank as himself or, if there is none, the junior eligible line officer serving on active duty in that grade with the next earlier date of rank.

[§ 5652b. Regular Navy: lieutenants (junior grade) originally appointed as ensigns under section 2106, 2107, 5573, or 6909 of this title

[Each officer appointed to the active list of the Navy in the grade of ensign under section 2106, 2107, 5573, or 6909 of this title who is serving as a staff corps officer at the time of his promotion to the grade of lieutenant (junior grade) shall, upon that promotion, have assigned to him as his running mate the eligible officer serving on active duty in the grade of lieutenant (junior grade), with date of rank in the same calendar year, who would be next senior to him if the staff corps officer had been originally appointed in the grade of ensign in the line and had continued to serve as a line officer until the date of his promotion to the grade of lieutenant (junior grade), or, if there is none, the eligible line officer who would have been next junior to the staff corps officer.

[§ 5652c. Regular Navy: officers appointed from the Naval Reserve or from temporary officers

[An officer appointed to the active list of the Navy in a staff corps under section 5573a of this title shall have a running mate assigned to him under regulations to be prescribed by the President.

[§ 5653. Regular Navy: lieutenants and above

[The Secretary of the Navy shall assign a running mate to each officer whose original appointment to the active list of the Navy in a staff corps is in the grade of lieutenant or above. Except as provided in sections 5652c and 5654 of this title, the officer to be assigned as the running mate may be any eligible line officer on active duty having the same date of rank as the staff corps officer concerned in the highest grade, permanent or temporary, to which the staff corps officer is appointed. If no eligible line officer serving on active duty in that grade has the same date of rank as the staff corps officer, the officer to be assigned as his running mate is the junior eligible line officer on active duty having the next earlier date of rank in that grade.

[§ 5654. Regular Navy: transfers from line

[When an officer on the active list in the line of the Navy is transferred to a staff corps in the grade of lieutenant (junior grade) or above, he shall have assigned to him as his running mate the eligible line officer on active duty who was next senior to him at the time of his transfer.

[§ 5655. Naval Reserve: officers ordered to active duty

[When an officer of the Naval Reserve in a staff corps is ordered to active duty and placed on a lineal list, the Secretary of the Navy shall assign to him as his running mate an eligible line officer serving on active duty in the same grade and appropriate to his lineal position.

[§ 5656. Reassignment: running mate separated, released, or loses numbers

[If the running mate of a staff corps officer on active duty is separated from the active list, is released from active duty, or loses numbers, the staff corps officer shall have a new running mate assigned to him. The officer to be so assigned is the eligible line officer who was next senior to the former running mate, or if there is none, the eligible line officer who was next junior to him.

[§ 5657. Reassignment: staff corps officer promoted

[(a) When a staff corps officer on active duty is promoted after selection, he shall have a running mate assigned to him in the higher grade. The officer to be so assigned is an eligible line officer serving in the higher grade whose name was placed on the promotion list for that grade upon approval of the report of the line selection board immediately preceding the staff corps selection board that selected the staff corps officer.

[(b) The officer to be assigned as the running mate of a staff corps officer under subsection (a) is the same line officer who was the running mate of the staff corps officer before the staff corps officer was promoted, if the former running mate was selected for promotion by the line selection board immediately preceding the staff corps board. Otherwise, the officer to be assigned as the new running mate is the eligible line officer, among those so selected, who was next senior to the former running mate in the grade from which promoted, or the next junior if none senior were so selected.

[(c) If a selection board for a grade in a staff corps is not convened between the dates of convening of two or more line selection boards for the grade, the earliest of those line selection boards is considered to be the line selection board immediately preceding the staff corps board for the purpose of this section.

[§ 5658. Reassignment: staff corps officer not promoted

[If the running mate of a staff corps officer on active duty is promoted to a higher grade and the staff corps officer is not so promoted, the staff corps officer shall have a new running mate assigned to him in the grade in which he remains. The officer to be so assigned is the eligible line officer in that grade who was next senior to the former running mate or, if there is none, the eligible line officer in that grade who was next junior to him.

[§ 5659. Reassignment: staff corps officer loses numbers

[(a) If a staff corps officer not restricted in the performance of duty serving on active duty in the grade of lieutenant (junior grade) or above loses numbers in grade, he shall have assigned to him as his new running mate the line officer who is the running mate of the most junior officer of his corps, not restricted in the performance of duty, who becomes senior to him as the result of his loss of numbers.

[(b) If a staff corps officer restricted in the performance of duty serving on active duty in the grade of lieutenant (junior grade) or above loses numbers in grade, he shall have assigned to him as his new running mate the line officer who is the running mate of the most junior officer of his corps, restricted in the performance of duty, who becomes senior to him as the result of his loss of numbers.

[§ 5660. Reassignment: running mate advanced

[If the running mate of a staff corps officer on active duty is advanced in numbers, or advanced in grade under section 5789 of this title, the staff corps officer shall have a new running mate assigned to him. The officer to be so assigned is the eligible line officer, not advanced, who was next senior to the former running mate before the advancement of such former running mate or, if there is none, the senior eligible line officer remaining in the grade.

[§ 5661. Reassignment: staff corps officer advanced

[(a) If a staff corps officer not restricted in the performance of duty serving on active duty in the grade of lieutenant (junior grade) or above is advanced in numbers in his grade, he shall have assigned to him as his new running mate the running mate of the officer of his grade and corps, not restricted in the performance of duty, who is next senior to him in the position to which he is advanced or, if there is none, the running mate of the officer of his grade and corps, not restricted in the performance of duty, who is next junior to him in his new position.

[(b) If a staff corps officer restricted in the performance of duty serving on active duty in the grade of lieutenant (junior grade) or above is advanced in numbers in his grade, he shall have assigned to him as his new running mate the running mate of the officer of his grade and corps, restricted in the performance of duty, who is next senior to him in the position to which he is advanced or, if there is none, the running mate of the officer of his grade and corps, restricted in the performance of duty, who is next junior to him in his new position.

[§ 5662. Suspension: preceding sections

[(a) The President may suspend any provision of the preceding sections of this chapter relating to officers serving in the grades of lieutenant and lieutenant (junior grade) during any period when—

[(1) the number of officers serving on active duty in the grade of ensign and above in the line of the Navy exceeds the number of officers on the active list in the line of the Navy; and

[(2) he determines that the needs of the service so require.

[(b) During a war or national emergency, the President may suspend any provision of the preceding sections of this chapter. Such a suspension may not continue beyond September 30 of the fiscal year following that in which the war or national emergency ends.

[§ 5663. Application: preceding sections

[(a) The preceding sections of this chapter do not apply to—

[(1) women officers appointed under section 5590 of this title;

[(2) women reserve officers, other than reserve officers in the Nurse Corps and other than reserve officers appointed under section 5581 of this title;

[(3) retired officers;

[(4) officers of the Navy Reserve assigned to active duty for training;

[(5) officers of the Naval Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve; or

[(6) officers of the Naval Reserve ordered to temporary active duty to prosecute special work.

[(b) For the purpose of the preceding sections of this chapter, officers listed in subsection (a) may not be included in any list for determining the numerical position in order of lineal rank of either line or staff corps officers, nor are they counted as officers serving on active duty for the purpose of section 5662 of this title.

[§ 5664. Regular Navy: women staff corps officers appointed under section 5590 of this title

[Women officers on the active list of the Navy appointed under section 5590 of this title in any staff corps shall have running mates assigned to them from among women officers on the active list in the line of the Navy. Running mates for such officers shall be assigned in the manner prescribed in this chapter for the assignment of running mates to other staff corps officers.

[§ 5665. Naval Reserve and Marine Corps Reserve: active status officers in permanent grades above chief warrant officer, W-4

[(a) While in the grade of lieutenant (junior grade) or in a higher grade in which initially appointed, each officer in an active status in the Naval Reserve shall have a running mate of the same grade. Except as provided in subsection (d), the running mate shall be the officer not restricted in the performance of duty on the lineal list of line officers of the Navy who is next junior to the reserve officer.

[(b) While in the grade of first lieutenant or in a higher grade in which initially appointed, each officer in an active status in the Marine Corps Reserve shall have a running mate of the same grade. Except as provided in subsection (d), the running mate shall be the officer not restricted in the performance of duty on the active list of the Marine Corps who is next junior to the reserve officer.

[(c) An officer in an active status in the Naval Reserve or the Marine Corps Reserve who is assigned a running mate after the initial assignment under subsection (a) or (b) shall be assigned a running mate in accordance with the principles prescribed by this chapter for the assignment of running mates to staff corps officers on the active list of the Navy. However, except as provided in subsection (d), the running mate shall, whenever possible, be the officer not restricted in the performance of duty on the lineal list of line officers of the Navy or on the active list of the Marine Corps, as appropriate, who is next junior to the reserve officer.

[(d) The running mate of a woman officer of the Naval Reserve, except an officer in the Nurse Corps or an officer appointed under section 5581 of this title, shall be the woman officer on the active list in the line of the Navy who is next junior to her. The running mate of a woman officer of the Marine Corps Reserve shall be the woman officer on the active list of the Marine Corps who is next junior to her.

[(e) A reserve officer who was assigned a running mate under laws in effect before July 1, 1955, continues to have that running mate unless assigned a new one under subsection (c).

[§ 5666. Appointments for limited duration not considered

[For the purpose of this chapter an officer serving in a grade to which he has been appointed for a period of limited duration is considered as serving in the grade he would hold if he had not been so appointed.]

CHAPTER 541—RUNNING MATES FOR RESERVE OFFICERS

Sec.

5665. Naval Reserve and Marine Corps Reserve: active status officers in permanent grades above chief warrant officer, W-4.

§ 5665. Naval Reserve and Marine Corps Reserve: active status officers in permanent grades above chief warrant officer, W-4

(a) While in the grade of lieutenant (junior grade) or in a higher grade, each officer in an active status in the Naval Reserve who is not on an active-duty list has a running mate of the same grade from the active-duty list who shall be assigned under regulations prescribed by the Secretary of the Navy.

(b) While in the grade of first lieutenant or in a higher grade, each officer in an active status in the Marine Corps Reserve who is not on an active-duty list has a running mate of the same grade

from the active-duty list who shall be assigned under regulations prescribed by the Secretary of the Navy.

CHAPTER 544—TEMPORARY APPOINTMENTS

Sec.
5721. Temporary promotion of certain Navy lieutenants.

§ 5721. Temporary promotion of certain Navy lieutenants

(a) An officer in the line of the Navy in the grade of lieutenant who—

(1) has a skill in which the Navy has a critical shortage of personnel (as determined by the Secretary of the Navy); and

(2) is serving in a position (as determined by the Secretary of the Navy) which (A) is designated to be held by a lieutenant commander, and (B) requires that an officer serving in such position have the skill possessed by such officer,

may be temporarily promoted to the grade of lieutenant commander under regulations to be prescribed by the Secretary of the Navy. Appointments under this section shall be made by the President alone.

(b)(1) An appointment under this section does not change the position on the active-duty list or the permanent, probationary, or acting status of the officer so appointed, prejudice the officer in regard to other promotions or appointments, or abridge the rights or benefits of the officer.

(2) For the purposes of section 523 of this title, an officer holding an appointment under this section is considered as serving in the grade of lieutenant commander.

(c) A temporary promotion under this section may be made only upon the recommendation of a board of officers convened by the Secretary of the Navy for the purpose of recommending officers for such promotions.

(d) Each appointment under this section, unless expressly declined, is, without formal acceptance, regarded as accepted on the date such appointment is made, and a member so appointed is entitled to the pay and the allowances of the grade of lieutenant commander from the date the appointment is made.

(e) An appointment of an officer to the grade of lieutenant commander under this section terminates upon the officer's detachment from a position described in subsection (a)(2). When an officer holding an appointment under this section whose name is on a promotion list to the grade of lieutenant commander as a result of a selection under section 603 or chapter 36 of this title other than is assigned to a position other than such a position described in subsection (a)(2), the appointment of such officer to the grade of lieutenant commander shall be made to include the interim period between such officer's detachment from the qualifying position and the date of promotion as a result of such other action.

(f) The authority to make appointments under this section terminates on September 30, 1983.

[CHAPTER 543—SELECTION BOARDS

[Sec.
[5701. Navy; line officers: promotion and continuation on the active list.
[5702. Navy; staff corps officers: promotion and continuation on the active list.
[5703. Marine Corps; officers: promotion and continuation on the active list.

[5704. Navy and Marine Corps; women officers: promotion.
[5705. Oath of members.
[5706. Information furnished to boards.
[5707. Officers to be recommended for promotion or continuation.
[5708. Reports: certification required.
[5709. Navy and Marine Corps: retention of rear admirals and major generals on the active list.
[5710. Reports; submission to President or Secretary of the Navy.
[5711. Suspension and exceptions: preceding sections.

[§ 5701. Navy; line officers: promotion and continuation on the active list

[(a) at least once each year the Secretary of the Navy shall convene the following selection boards to recommend male officers in the line of the Navy for promotion and continuation on the active list:

[(1) A board to recommend rear admirals not restricted in the performance of duty for continuation on the active list, consisting of five officers of the Regular Navy on the active list or the retired list senior in permanent rank to all officers under consideration.

[(2) A board to recommend captains restricted in the performance of duty for continuation on the active list, consisting of nine officers serving in the grade of rear admiral or above.

[(3) A board to recommend captains for promotion to the grade of rear admiral and a board to recommend commanders for promotion to the grade of captain, each consisting of not less than nine officers serving in the grade of rear admiral or above.

[(4) A board to recommend lieutenant commanders for promotion to the grade of commander, consisting of three officers serving in the grade of rear admiral and six officers serving in the grade of captain.

[(5) A board to recommend lieutenants for promotion to the grade of lieutenant commander and a board to recommend lieutenants (junior grade) for promotion to the grade of lieutenant, each consisting of nine officers serving in the grade of captain or above.

[(b) Except as provided in subsections (c) and (d), selection boards convened under clauses (2) through (5) of subsection (a) shall be composed of officers on the active list in the line of the Navy not restricted in the performance of duty.

[(c) When officers designated for engineering duty, aeronautical engineering duty, or special duty are eligible for consideration by a selection board convened under subsection (a), the Secretary shall appoint, as alternate members of the board, three officers on the active list of the Navy of the same designation and classification as any such eligible officer. If three such officers are not available, he shall appoint as many as are available. Junior members of the board who are not restricted in the performance of duty, in like number, may not act upon the case of any officer designated for engineering duty, aeronautical engineering duty, or special duty. No alternate member may act upon the case of any officer who is not of the same designation as himself. When a board convened under subsection (a)(3) consists of more than nine members, only nine officers may act upon the case of any officer designated for engineering duty, aeronautical engineering duty, or special duty;

namely, the three alternate members of the same designation as the officer under consideration (or the lesser available number of such officers) plus the number of the most senior members not restricted in the performance of duty necessary to make a total of nine.

[(d) When officers of the Naval Reserve are eligible for consideration by a selection board convened under subsection (a), the Secretary shall appoint an appropriate number of reserve officers, otherwise qualified under this section, as members of the board and shall appoint officers on the active list of the Navy, qualified under this section, to complete the prescribed membership.

[(e) No officer may be a member of two successive boards for the consideration of officers for promotion to the same grade.

[§ 5702. Navy; staff corps officers: promotion and continuation on the active list

[(a) The Secretary of the Navy shall convene the following selection boards to recommend staff corps officers, other than women officers appointed under section 5590 of this title, for promotion and for continuation on the active list:

[(1) A board for each corps, other than the Medical Service Corps, to recommend captains in each corps and commanders in the Nurse Corps for continuation on the active list or to recommend captains in each corps, other than the Medical Service Corps and the Nurse Corps, for promotion to the grade of rear admiral, each consisting of not less than three or more than nine officers serving in the grade of rear admiral or above.

[(2) A board for each corps, other than the Medical Service Corps, and for each grade as appropriate, to recommend commanders, lieutenant commanders, lieutenants, and lieutenants (junior grade) for promotion to the next higher grade, each consisting of not less than six or more than nine officers serving in the grade of commander or above.

[(3) A board for the Medical Service Corps to recommend captains for continuation on the active list, consisting of not less than three or more than six officers of the Regular Navy, in the Medical Corps serving in the grade of rear admiral.

[(4) A board for the Medical Service Corps, for each grade, to recommend commanders, lieutenant commanders, lieutenants and lieutenants (junior grade) for promotion to the next higher grade, each consisting of not less than six or more than nine officers serving in the grade of captain or above, of whom two-thirds shall be officers in the Medical Corps and one-third officers in the Medical Service Corps, except that when officers in the Medical Service Corps in dental specialties are eligible for consideration for promotion the membership of the board shall include, in lieu of one of the officers in the Medical Corps, an officer in the Dental Corps serving in the grade of captain or above.

[(b) Each board convened under this section to consider officers in the Medical Corps, the Supply Corps, the Judge Advocate General's Corps, the Chaplain Corps, the Civil Engineer Corps, the Dental Corps, or the Nurse Corps shall consist of officers in the corps concerned, and each board convened under this section to consider officers in the Medical Servie Corps shall consist of officers in the corps indicated in subsection (a). Except as provided in subsection (c) and (d), each board convened under this section shall consist of officers of the Regular Navy on the active list or the retired list.

[(c) Except as provided in subsection (a), when there is an insufficient number of staff corps officers legally and physically qualified to serve on a board convened under this section, the Secretary shall complete the minimum required membership by appointing as members of the board officers on the active list in the line of the Navy serving in the grades prescribed in subsection (a). However, in the case of boards considering officers in the Nurse Corps, the Secretary may complete the minimum required membership by appointing as members of the board officers on the active list of the Navy in the Medical Corps serving in the prescribed grades.

[(d) When officers of the Naval Reserve are eligible for consideration by a selection board convened under this section, the Secretary shall appoint an appropriate number of reserve officers, otherwise qualified under this section, as members of the board and shall appoint officers of the Regular Navy, qualified under this section, to complete the prescribed membership.

[(e) Each board prescribed in this section shall be convened at least once each year as soon as practicable after the report of a corresponding selection board for line officers has been approved by the President and at such other times as the Secretary directs.

[(f) No officer may be a member of two successive boards convened under this section for the consideration of officers for promotion to the same grade or for the consideration of captains for continuation on the active list.

[§ 5703. Marine Corps; officers: promotion and continuation on the active list

[(a) At least once each year the Secretary of the Navy shall convene the following selection boards to recommend male officers of the Marine Corps for promotion and for continuation on the active list:

[(1) A board to recommend brigadier generals for promotion to the grade of major general, consisting of nine officers holding permanent appointment in the grade of major general or above.

[(2) A board to recommend colonels for promotion to the grade of brigadier general and a board to recommend lieutenant colonels for promotion to the grade of colonel, each consisting of nine officers serving in the grade of brigadier general or above, except that before October 1, 1982, such a board may consist of nine officers serving in the grade of major general or above.

[(3) A board to recommend majors for promotion to the grade of lieutenant colonel, consisting of three officers serving in the grade of major general or brigadier general and six officers serving in the grade of colonel.

[(4) A board to recommend captains for promotion to the grade of major and a board to recommend first lieutenants for promotion to the grade of captain, each consisting of nine officers serving in the grade of colonel or above.

[(b) Except as provided in subsections (c), (d), and (e), selection boards convened under this section shall be composed of officers of the Regular Marine Corps on the active list or the retired list, not restricted in the performance of duty.

[(c) If nine general officers are not available to comprise a selection board to recommend officers for promotion to the grade of major general, brigadier general, or colonel, the Secretary shall complete the prescribed membership by appointing as members of the board officers on the active list in the line of the Navy, not restricted in the performance of duty, serving in the grade of rear admiral or above.

[(d) When officers of the Marine Corps Reserve are eligible for consideration by a selection board convened under this section, the Secretary shall appoint an appropriate number of reserve officers, otherwise qualified under this section, as members of the board and shall appoint officers of the Regular Marine Corps, qualified under this section, to complete the prescribed membership.

[(e) No officer may be a member of two successive boards for the consideration of officers for promotion to the same grade.

[§ 5704. Navy and Marine Corps; women officers: promotion

[(a) At least once each year and at such time, as he directs, the Secretary of the Navy shall convene selection boards to recommend women officers in the line of the Navy for promotion to the grades of captain, commander, lieutenant commander, and lieutenant. The Secretary shall determine the composition of these boards. However, each board shall consist of not less than six or more than nine officers in the line of the Regular Navy on the active list or the retired list.

[(b) The Secretary shall convene selection boards, for each staff corps in which there are women officers appointed under section 5590 in this title, to recommend women officers for promotion to the grades of captain, commander, lieutenant commander, and lieutenant. The Secretary shall determine the composition of these boards. However, each board shall consist of not less than six or more than nine officers of the Regular Navy in the appropriate staff corps on the active list or the retired list. Each of the boards prescribed by this subsection shall be convened at least once each year as soon as practicable after the report of a corresponding selection board convened under subsection (a) has been approved by the President and at such times as the Secretary directs.

[(c) At least once each year and at such times as he directs, the Secretary shall convene selection boards to recommend women officers in the Marine Corps for promotion to the grades of colonel, lieutenant colonel, major, and captain. The Secretary shall determine the composition of these boards. However, each board shall consist of not less than six or more than nine officers of the Regular Marine Corps on the active list or the retired list.

[(d) Notwithstanding subsections (a), (b), and (c), the Secretary is not required to convene a board under this section to recommend women officers for promotion to a grade when—

[(1) there are no vacancies in the grade concerned and the Secretary estimates that none will occur in the next 12 months; or

[(2) all women officers in the next lower grade are ineligible for consideration for promotion to the grade concerned.

[§ 5705. Oath of members

[Each member of a selection board convened under the preceding sections of this chapter shall swear that he will, without prejudice or partiality, and having in view both the special fitness of officers and the efficiency of the naval service, perform the duties imposed upon him by law.

[§ 5706. Information furnished to boards

[The Secretary of the Navy shall furnish the appropriate selection board with—

[(1) the number of line officers of the Navy not restricted in the performance of duty, the number of officers designated for engineering duty, the number of officers designated for aeronautical engineering duty, the number of officers designated for special duty, and the number of line officers designated for limited duty that the board may recommend for promotion to the next higher grade;

[(2) the number of staff corps officers not restricted in the performance of duty and the number of staff corps officers designated for limited duty that the board may recommend for promotion to the next higher grade;

[(3) the number of officers of the Marine Corps not restricted in the performance of duty and the number of officers of the Marine Corps designated for limited duty that the board may recommend for promotion to the next higher grade;

[(4) the names of all officers eligible for consideration for promotion to each grade to which the board will recommend officers for promotion;

[(5) the number of rear admirals not restricted in the performance of duty that the board may recommend for continuation on the active list;

[(6) the names of all rear admirals eligible for consideration for continuation on the active list;

[(7) the number of captains designated for engineering duty, the number of captains designated for aeronautical engineering duty, and the number of captains designated for special duty that the board may recommend for continuation on the active list;

[(8) the number of captains in the staff corps concerned that the board may recommend for continuation on the active list;

[(9) the names of all captains in the Navy eligible for consideration for continuation on the active list;

[(10) the names of all officers in the promotion zone under consideration; and

[(11) the records of all officers whose names are furnished to the board.

[§ 5707. Officers to be recommended for promotion or continuation

[(a) Of the officers considered for promotion by a selection board convened under this chapter, the board shall recommend for promotion, as appropriate—

[(1) those eligible male officers on the active list in the line of the Navy or on the active list of the Marine Corps whom the board considers best fitted for promotion;

[(2) those eligible officers on the active list of the Navy, other than women officers appointed under section 5590 of this title, under consideration for—

[(A) promotion to any grade in the Supply Corps or the Civil Engineer Corps; or

[(B) promotion to the grade of commander or above in any other staff corps;

[whom the board considers best fitted for promotion;

[(3) those eligible officers other than women officers appointed under section 5590 of this title, on the active list of the Navy in any staff corps not otherwise provided for in this subsection, whom the board considers fitted for promotion;

[(4) those eligible women officers, appointed under section 5590 of this title, on the active list of the Navy in the line or a staff corps or on the active list of the Marine Corps under consideration for promotion to the grade of captain (Navy), commander, lieutenant commander, colonel, lieutenant colonel, or major whom the board considers best fitted for promotion;

[(5) those eligible women officers, appointed under section 5590 of this title, on the active list of the Navy in the line or a staff corps or on the active list of the Marine Corps under consideration for promotion to the grade of lieutenant in the Navy or captain in the Marine Corps whom the board considers qualified for promotion; or

[(6) those eligible officers not on the active list of the Navy or the Marine Corps whom the board considers qualified for continued active duty.

[(b) Each selection board convened under the preceding sections of this chapter to recommend officers for continuation on the active list shall recommend those officers under consideration whom it considers best fitted for continued service on the active list.

[(c) From among those eligible officers on the active list of the Navy or on the active list of the Marine Corps who are junior in lineal rank to the junior officer in the appropriate promotion zone in any grade below that of captain in the Navy or colonel in the Marine Corps, the board may recommend as best fitted for promotion a number of officers that does not exceed 5 percent of the total number of officers that the board is authorized to recommend for promotion to the grade concerned, unless that number is less than one, in which case is may recommend one such officer.

[(d) The recommendation of any selection board with respect to the promotion of officers of the Navy designated for engineering duty, aeronautical engineering duty, special duty, or limited duty, or officers of the Marine Corps designated for limited duty shall be based upon their comparative fitness within such categories, for the duties prescribed for them by law.

[(e) The recommendation of a selection board with respect to any woman officer on the active list in the line of the Navy or the active list of the Marine Corps shall be based upon her comparative fitness for the duties to which she is assigned in the line of the Navy or in the Marine Corps. The recommendation of a selection board with respect to any woman officer on the active list in any staff corps, appointed under section 5590 of this title, shall be based upon her comparative fitness for the duties to which she is assigned in her staff corps.

[(f) Administrative staff duty, duty in aviation, supply duty, or duty in any technical specialty performed by an officer of the Marine Corps shall be given weight by the selection board in determining his fitness for promotion equal to that given to line duty equally well performed.

[(g) The status of having once failed of selection for promotion to a grade shall not prejudice an officer with respect to his qualifications, his fitness for the naval service, or his eligibility for selection for promotion to that grade by the next succeeding selection board.

[(h) The total number of officers that may be recommended for promotion in any grade may not exceed the number furnished the board concerned by the Secretary of the Navy under section 5706 of this title. The number of officers that may be recommended for continuation on the active list by a board convened under this chapter may not exceed the number furnished the board concerned by the Secretary under section 5706 of this title.

[(i) No officer may be recommended for promotion or for continuation on the active list unless he receives the recommendation of at least two-thirds of the acting members of the board concerned. However, a board composed of five acting members or less may so recommend an officer upon the concurrence of a majority of its members.

[§ 5708. Reports: certification required

[(a) Each board convened under the preceding sections of this chapter shall submit a report in writing, signed by all the acting members thereof, and shall certify in its report that the board has carefully considered the case of each officer whose name was furnished to it under section 5706 of this title.

[(b) A board convened under this chapter that recommends officers in any of the following categories for promotion shall certify in its report that, in the opinion of at least two-thirds of the acting members of the board if the board has more than five acting members, or in the opinion of at least a majority of the acting members if the board has five acting members or less, the officers recommended are, subject to the limitations prescribed in section 5707(c) of this title, selected as best fitted to assume the duties of the next higher grade:

[(1) Male officers on the active list in the line of the Navy.

[(2) Male officers on the active list of the Marine Corps.

[(3) Male officers on the active list of the Navy in the Supply Corps.

[(4) Male officers on the active list of the Navy in the Civil Engineer Corps.

[(5) Women officers on the active list of the Navy, appointed under section 5590 of this title, in grade of lieutenant or above.

[(6) Women officers on the active list of the Marine Corps in the grade of captain or above.

[(7) Officers on the active list of the Navy in any staff corps in the grade of lieutenant commander or above.

[(c) A board convened under this chapter that recommends officers in any of the following categories for promotion shall certify in its report that, in the opinion of at least two-thirds of the acting members of the board, the officers recommended are selected as fitted to assume the duties of the next higher grade:

[(1) Officers, other than women officers appointed under section 5590 of this title, in the grade of lieutenant or lieutenant (junior grade) on the active list of the Navy in the Medical Corps, the Judge Advocate General's Corps, Chaplain Corps, Dental Corps, or Medical Service Corps.

[(2) Officers on the active list of the Navy in the Nurse Corps in the grade of lieutenant or lieutenant (junior grade).

[(d) A board convened under this chapter that recommends officers in any of the following categories for promotion shall certify in its report that, in the opinion of at least two-thirds of the acting members of the board, the officers recommended are selected as qualified for promotion:

[(1) Women officers in the grade of lieutenant (junior grade) on the active list of the Navy in the line or in any staff corps appointed under section 5590 of this title.

[(2) Women officers on the active list of the Marine Corps in the grade of first lieutenant.

[(e) The report of a board convened under this chapter that recommends for promotion officers not on the active list of the Navy or the Marine Corps shall certify in its report that, in the opinion of at least two-thirds of the acting members of the board, the officers recommended are selected as qualified for continued active duty.

[(f) As required by section 6384 of this title, each board convened under this chapter to recommend officers for promotion shall report, from among those officers eligible for consideration, the name of each officer with less than 20 years of service whose record, in the opinion of the board, indicates his unsatisfactory performance of duty in his present grade and, in the opinion of the board, indictes that he would not satisfactorily perform the duties of a higher grade.

[(g) A board convened under this chapter that recommends officers for continuation on the active list shall certify in its report that, in the opinion of at least two-thirds of the acting members if the board has more than five acting members or in the opinion of at least a majority of the acting members if the board has five acting members or less, the officers recommended are selected as best fitted for continued service on the active list.

[§ 5709. Navy and Marine Corps: retention of rear admirals and major generals on the active list

[(a) Each year the Secretary of the Navy may convene a board to recommend rear admirals in the line of the Navy restricted in the performance of duty and rear admirals in any staff corps for retention on the active list. He shall convene such a board in any year in which he determines that one or more such officers, who would otherwise retire under section 6372 of this title, should be retained on the active list. The board shall be composed of not less than three naval officers.

[(b) Each year the Secretary may convene a board to recommend officers serving in the grade of major general for retention on the active list. He shall convene such a board in any year when three or more such officers will be subject to retirement under section 6373 of this title. The board shall be composed of not less than three officers of the Regular Marine Corps or the Regular Navy on the active list or the retired list.

[(c) The number of officers that may be recommended for retention by any board convened under this section may not exceed the number furnished it by the Secretary.

[§ 5710. Reports: submission to President or Secretary of the Navy

[(a) The report of a board convened under section 5709 of this title to recommend officers for retention on the active list shall be submitted to the Secretary of the Navy for his approval or disapproval.

[(b) The report of a board convened under section 5701, 5702, 5703, or 5704 of this title shall be submitted to the President for his approval or disapproval. If any officer recommended by such a board is not acceptable to the President, the board shall be informed of the name of that officer and shall, except as provided in subsection (c) of this section, recommend another eligible officer for promotion or for continuation on the active list, as the case may be. If necessary, the board may be reconvened for this purpose.

[(c) If any woman officer appointed under section 5590 of this title who is recommended for promotion to the grade of lieutenant in the Navy or captain in the Marine Corps is not acceptable to the President, the board shall be informed, the name of that officer shall be removed from the report of the board, and no additional recommendation may be made.

[§ 5711. Suspension and exceptions: preceding sections

[(a) the President may suspend any provision of the preceding sections of this chapter relating to officers serving in the grades of lieutenant and lieutenant (junior grade) in the Navy, other than women officers appointed under section 5590 of this title, or relating to male officers serving in the grades of captain and first lieutenant in the Marine Corps during any period when—

[(1) the number of male officers serving on active duty in the grade of ensign and above in the line of the Navy exceeds the number of male officers on the active list in the line of the Navy; and

[(2) he determines that the needs of the service so require.

[(b) During a war or national emergency, the President may suspend any provision of the preceding sections of this chapter. Such a suspension may not continue beyond September 30 of the fiscal year following that in which the war or national emergency ends.

[(c) Officers in the following categories are ineligible for consideration by a selection board under this chapter and are not counted as officers serving on active duty for the purpose of subsection (a):

[(2) Retired officers.

[(3) Officers of the Naval reserve and the Marine Corps Reserve assigned to active duty for training.

[(4) Officers of the Naval Reserve and the Marine Corps Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve or the Marine Corps reserve.

[(5) Officers of the Naval Reserve and the Marine Corps Reserve ordered to temporary active duty to prosecute special work.

[CHAPTER 545—PROMOTIONS

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[§5751. Navy, male line officers; Marine Corps, male officers: eligibility for consideration by selection board

[(a) Each officer who is serving in the grade of brigadier general in the Marine Corps is eligible for consideration for promotion to the grade of major general by a selection board that is convened under chapter 543 of this title in the fiscal year in which he completes three years of service in the grade of brigadier general.

[(b) Each male officer in the line of the Navy and each male officer of the Marine Corps is eligible for consideration for promotion to the next higher grade by a selection board that is convened, under chapter 543 of this title, in the fiscal year in which he is serving:

[(1) Three years in the grade of captain in the Navy or colonel in the Marine Corps.

[(2) Five years in the grade of commander in the Navy or lieutenant colonel in the Marine Corps.

[(3) Four years in the grade of lieutenant commander in the Navy or major in the Marine Corps.

[(4) Four years in the grade of lieutenant in the Navy or captain in the Marine Corps.

[(5) Two years in the grade of lieutenant (junior grade) in the Navy or first lieutenant in the Marine Corps.

[(c) For the purpose of this section, service in a grade includes all service in that grade or a higher grade, under either a temporary or a permanent appointment. However, service under a temporary appointment which, by its own terms, is limited in duration is considered only as service in the grade that the officer concerned would have held if he had not been so appointed. An officer promoted after August 7, 1947, shall be credited with service in the grade to which promoted only from the date of his eligibility for promotion to that grade.

[(d) Notwithstanding the provisions of subsections (a), (b), and (c), no officer who has not lost numbers or precedence may become eligible for consideration by a selection board until all officers of his grade senior to him in lineal position are so eligible.

[(e) Of the officers in any grade designated for limited duty who would otherwise be eligibe for consideration for promotion under this section, only the junior officer in the promotion zone for officers designated for limited duty and officers senior to him in the grade concerned are eligible for consideration.

[§5752. Navy, women line officers; Marine Corps, women officers: eligibility for consideration by selection board

[(a) Each woman officer in the line of the Navy and each woman officer of the Marine Corps is eligible for consideration for promotion to the next higher grade by a selection board that is convened under chapter 543 of this title in the fiscal year in which she completes the following service in the grade in which she is serving:

[(1) Four years in the grade of commander in the Navy or lieutenant colonel in the Marine Corps.

[(2) Four years in the grade of lieutenant commander in the Navy or major in the Marine Corps.

[(3) Four years in the grade of lieutenant in the Navy or captain in the Marine Corps.

[(4) Such period of service in the grade of lieutenant (junior grade) in the Navy or first lieutenant in the Marine Corps as the Secretary of the Navy prescribes.

[(b) For the purpose of this section, an officer's service in a grade is computed from her date of rank in that grade.

[§5753. Navy; staff corps officers: eligibility for consideration by selection board

[(a) Except as provided in subsection (b), staff corps officers are eligible for consideration for promotion to the next higher grade by a selection board convened under chapter 543 of this title when their running mates become eligible for consideration.

[(b) Officers in Medical Corps, the Judge Advocate General's Corps, the Dental Corps, the Medical Sevice Corps, and the Nurse Corps, in the grades of lieutenant and lieutenant (junior grade), except officers in those corps appointed under section 5590 of this title, are eligible for consideration for promotion to the next higher grade by a selection board convened under chapter 543 of this title when they are in the promotion zone or are senior to the officers in the promotion zone in the grade in which they are serving.

[§5754. Eligibility for consideration by selection boards: general provision

[(a) Each officer who becomes eligible for consideration for promotion under the preceding sections of this chapter remains so eligible while on active duty regardless of failures of selection for promotion.

[(b) A selection board convened under chapter 543 of this title may not consider for promotion to the next higher grade any officer whose name is on the promotion list for that grade as a result of his selection by an earlier board convened under that chapter.

[§5755. Communications with selection board

[Each officer eligible for consideration for promotion by a selection board convened under chapter 543 of this title has the right to send a communication through official channels at any time not later than ten days after the convening of that board inviting attention to any matter of record in the Department of the Navy concerning himself which he considers important in his case. The communication may not criticize any officer or reflect upon the character, conduct, or motive of any officer.

[§5756. Navy, male line officers not restricted in the performance of duty; Marine Corps, male officers not restricted in the performance of duty: numbers that may be recommended

[The Secretary of the Navy shall furnish the appropriate selection board convened under chapter 543 of this title with the number of male officers in the line of the Navy not restricted in the performance of duty or male officers of the Marine Corps not restricted in the performance of duty that may be recommended for promotion to the next higher grade. This number, determined by the Secretary as of the date the board is convened, is equal to the number of vacancies existing among such officers in the higher grade, plus the number of additional vacancies estimated for the next 12 months, minus the number of officers on the promotion list for that grade.

[§5757. Regular Navy, male line officers designated for limited duty; Regular Marine Corps, male officers designated for limited duty: numbers that may be recommended

[The Secretary of the Navy shall furnish the appropriate selection board convened under chapter 543 of this title with the number of male officers in the line of the Navy designated for limited duty or male officers of the Marine Corps designated for limited duty that may be recommended for promotion to the next higher grade. This number, determined by the Secretary as of the date the board is convened, is equal to the number of vacancies existing among such officers in the higher grade, plus the number of additional vacancies estimated for the next 12 months, minus the number of such officers on the promotion list for that grade.

[§5758. Regular Navy; male line officers designated for engineering duty, aeronautical engineering duty, and special duty: numbers that may be recommended

[(a) The Secretary of the Navy shall furnish the appropriate selection board convened under chapter 543 of this title with the numbers of officers of the Navy designated for engineering duty, aeronautical engineering duty, and special duty that may be recommended for promotion to the grade of rear admiral. He shall determine these numbers as of the date the selection board is convened. The total of these numbers is equal to the number of vacancies existing in the grade of rear admiral for officers restricted in the performance of duty, plus the number of additional vacancies estimated for the next 12 months, minus the number of such officers on the promotionl list. Within the total the Secretary may allocate such numbers to any of the named categories as he considers necessary to meet the needs of the service.

[(b) The Secretary shall furnish the appropriate selection board, convened under chapter 543 of this title to recommend officers for promotion to a grade below rear admiral, with the numbers of—

[(1) male officers designated for engineering duty;

[(2) male officers designated for aeronautical engineering dety; and

[(3) male officers designated for special duty;

that may be recommended for promotion to the grade concerned. He shall determine these numbers, based upon the needs of the service, as of the date the selection board is convened.

[(1) may not exceed the total number of male officers of that designation in the promotion zone; and

[(2) may not be less than the product of the number of officers of that designation in the promotion zone and a fraction, of which the numerator is the number of male line officers, not restricted in the performance of duty, in the same grade, that may be recommended for promotion in that fiscal year, and the denominator is the number of male line officers, not restricted in the performance of duty, in the promotion zone for the grade concerned in that year.

[§ 5760. Regular Navy, women line officers; Regular Marine Corps, women officers: numbers that may be recommended

[(a) The Secretary of the Navy shall furnish the appropriate selection board convened under chapter 543 of this title with the number of women officers in the line of the Navy that may be recommended for promotion too the grade of captain, commander, or lieutenant commander of the number of women officers of the Marine Corps that may be recommended for promotion to the grade of colonel, lieutenant colonel, or major. This number, determined by the Secretary as of the date the selection board is convened, is equal to the number of vacancies existing in the grade concerned plus the number of additional vacancies estimated for the next 12 months, minus the number of officers on the promotion list for that grade.

[(b) The Secretary shall furnish the appropriate selection board convened under chapter 543 of this title with the number of women officers in the line of the Navy that may be recommended for promotion to the grade of lieutenant or the number of women officers of the Marine Corps that may be recommended for promotion to the grade of captain. This number, determined by the Secretary as of the date the selection board is convened, is equal to the number of women officers in the next lower grade who are eligible for consideration by the board concerned.

[§ 5761. Navy; staff corps officers: numbers that may be recommended for promotion to grade of rear admiral

[The Secretary of the Navy shall furnish the appropriate selection board convened under chapter 543 of this title with the number of officers in any staff corps that may be recommended for promotion to the grade of rear admiral. This number, determined by the Secretary as of the date the selection board is convened, is equal to the number of vacancies existing in the grade of rear admiral in the corps concerned, plus the number of additional vacancies estimated for the next 12 months, minus the number of captains in the corps concerned on the promotion list.

[§ 5762. Navy; staff corps officers: numbers that may be recommended for promotion to grades below rear admiral

[(a) The Secretary of the Navy shall furnish the appropriate selection board convened under chapter 543 of this title with the number of officers, not restricted in the performance of duty other than women officers appointed under section 5590 of this title, that may be recommended for promotion to the grade of captain or commander in the Medical Corps, the Supply Corps, the Chaplain Corps, the Civil Engineer Corps, Dental Corps, the Medical Service Corps, or the Nurse Corps. This number, determined by the Secretary as of the date the selection board is convened is the product of—

[(1) the number of staff corps officers, not restricted in the performance of duty, in the promotion zone for the grade and corps concerned; and

[(2) a fraction, of which the numerator is the number of male line officers, not restricted in the performance of duty, who are placed on the promotion list pursuant to the report of the comparable board for the selection of line officers convened in the same fiscal year, and the denominator is the number of male line officers, not restricted in the performance of duty, in the promotion zone considered by that board.

[(b) The Secretary shall furnish the appropriate selection board convened under chapter 543 of this title with the number of male officers in the Supply Corps or the Civil Engineer Corps, not restricted in the performance of duty, that may be recommended for promotion to the grade of lieutenant commander or lieutenant. This number, determined by the Secretary as of the date the selection board is convened, is the product of—

[(1) the number of male staff corps officers, not restricted in the performance of duty, in the promotion zone for the grade and corps concerned; and

[(2) a fraction, of which the numerator is the number of male line officers, not restricted in the performance of duty, placed upon the promotion list pursuant to the report of the comparable board for the selection of line officers convened in the same fiscal year, and the denominator is the number of male line officers, not restricted in the performance of duty, in the promotion zone considered by that board.

[(c) The Secretary shall furnish the appropriate selection board convened under chapter 543 of this title with the number of male officers in the Supply Corps or the Civil Engineer Corps designated for limited duty that may be recommended for promotion to the next higher grade. This number, determined by the Secretary as of the date the selection board is convened, is the product of—

[(1) the number of male staff corps officers, designated for limited duty, in the promotion zone for the grade and corps concerned; and

[(2) a fraction, of which the numerator is the number of male line officers, designated for limited duty, placed on the promotion list pursuant to the report of the comparable board for the selection of line officers convened in the same fiscal year, and the denominator is the number of male line officers, designated for limited duty, in the promotion zone considered by that board.

[(d) The Secretary shall furnish the appropriate selection board convened under chapter 543 of this title with the number of officers in the Medical Corps, Judge Advocate General's Corps, the Chaplain Corps, the Dental Corps, the Medical Service Corps, or the Nurse Corps, other than women officers appointed under section 5590 of this title, that may be recommended for promotion to the grade of lieutenant commander or lieutenant. This number, determined by the Secretary as of the date the selection board is convened, is equal to the number of officers in the promotion zone for the grade and corps concerned.

[(f) The Secretary shall furnish the appropriate selection board convened under chapter 543 of this title with the number of officers that may be recommended for promotion to the grade of captain or commander in the Judge Advocate General's Corps. This number, determined by the Secretary as of the date the selection board is convened—

[(1) may not exceed the total number of officers of the Judge Advocate General's Corps in the promotion zone for the grade concerned; and

[(2) may not be less than the product of the number of officers of the Judge Advocate General's Corps in the promotion zone and a fraction, of which the numerator is the number of male line officers, not restricted in the performance of duty, placed upon the promotion list pursuant to the report of the comparable board for the selection of line officers convened in the same fiscal year, and the denominator is the number of male line officers, not restricted in the performance of duty in the promotion zone considered by that board.

[§ 5763. Regular Navy; women staff corps officers appointed under section 5590 of this title: number that may be recommended for promotion

[The Secretary of the Navy shall furnish the appropriate selection board convened under chapter 543 of this title with the number of women officers of the Navy in a staff corps, other than officers of the Nurse Corps and women officers appointed under section 5574, 5578, 5579, or 5581 of this title, that may be recommended for promotion to the grade of captain, commander, or lieutenant commander. This number is the product of—

[(1) the number of such women staff corps officers in the promotion zone for the grade and corps concerned; and

[(2) a fraction, of which the numerator is the number of women line officers who are placed on the promotion list pursuant to the report of the comparable board for the selection of women line officers convened in the same fiscal year, and the demoninator is the number of women line officers in the promotion zone considered by that board.

If the number so determined is a mixed number and the fraction is one-half or greater, the number that shall be furnished the board is the next higher whole number; if the number so determined is less than one, the number that shall be furnished the board is one. If the computation produces an indeterminate or inequitable number, the Secretary shall furnish the board with a number that is equitable.

[§ 5764. Navy; line officers: promotion zones

[(a) The Secretary of the Navy shall establish a promotion zone in each grade for male officers in the line of the Navy not restricted in the performance of duty when he convenes a selection

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96–1462

DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

NOVEMBER 13, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NICHOLS, from the Committee on Armed Services, submitted the following

REPORT

[To accompany S. 1918]

[Including cost estimate of the Congressional Budget Office]

The Committee on Armed Services to whom was referred the bill (S. 1918) to amend title 10, United States Code, to revise and make uniform the provisions of law relating to appointment, promotion, separation, and retirement of regular commissioned officers of the Army, Navy, Air Force, and Marine Corps, to establish the grade of commodore admiral in the Navy, to equalize the treatment of male and female commissioned officers, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill is a complete substitute therefor and appears in italic type in the reported bill.

The amendment to the title of the bill makes minor technical wording changes.

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board under chapter 543 of this title to consider officers in that grade for recommendation for promotion to the next higher grade. The promotion zone in each grade shall be composed of that number of the most senior such officers under consideration, who are eligible for selection for promotion to the next higher grade and who have not previously failed of such selection, that must either be selected for promotion by the particular board or be considered as having failed of such selection, in order to maintain a flow of promotion consistent with the terms of service set out in section 5768 of this title and in order best to assure to individuals in succeeding years equality of opportunity for promotion. The Secretary shall determine the number in the zone on the basis of a consideration of the number of vacancies estimated for the next higher grade in each of the next five years, the number of officers who will be eligible for selection in each of those years, and the terms of service that those officers will have completed.

[(b) The promotion zones in any grade below captain for male officers designated for engineering duty, for male officers designated for aeronautical engineeering duty, and for male officers designated for special duty are each composed of all male officers of one such designation who have not previously failed of selection for promotion to the next higher grade and who are senior to the junior officer in the corresponding promotion zone for male line officers in the Navy not restricted in the performance of duty.

[(c) The Secretary shall establish a promotion zone in each grade for male officers in the line of the Navy designated for limited duty at the time he convenes a selection board under chapter 543 of this title to consider officers in that grade for recommendation for promotion to the next higher grade. The promotion zone shall be composed of that number of the most senior such officers under consideration, who are eligible for selection for promotion to the next higher grade and who have not previously failed of such selection, that must either be selected for promotion by the particular board or be considered as having failed of such selection, in order to maintain a flow of promotion consistent with the terms of service set out in section 5768 of this title and in order best to assure to individuals in succeeding years equality of opportunity for promotion. The Secretary shall determine the number in the zone on the basis of a consideration of the numnber of vacancies estimated for the next higher grade in each of the next five years, the number of officers who will be eligible for selection in each of those years, and the terms of service that those officers will have completed.

[(d) The Secretary shall establish a promotion zone in each grade for women officers in the line of the Navy in the manner prescribed in this section for the establishment of promotion zones for male line officers.

[§ 5765. Marine Corps: officers: promotion zones

[(a) The Secretary of the Navy shall establish the promotion zone for officers of the Marine Corps serving in the grade of brigadier general at the time he convenes a selection board under chapter 543 of this title to consider officers in that grade for recommendation for promotion to the grade of major general. The promotion zone shall be composed of that number of the most senior such officers under consideration, who are eligible for selection for promotion to the next higher grade and who have not previously failed of such selection, that must either be selected for promotion by the particular board or be considered as having failed of such selection, in order to maintain a flow of promotion consistent with the needs of the service and in order best to assure to individuals in succeeding years equality of opportunity for promotion. The Secretary shall determine the number in the zone on the basis of a consideration of the number of vacancies estimated for the grade of major general in each of the next five years and the number of officers who will be eligible for selection to that grade in each of those years.

[(b) The Secretary shall establish a promotion zone in each grade below brigadier general for male officers of the Marine Corps not restricted in the performance of duty at the time he convenes a selection board under chapter 543 of this title to consider officers in that grade for recommendation for promotion to the next higher grade. The promotion zone in each grade shall be composed of that number of the most senior such officers under consideration, who are eligible for selection for promotion to the next higher grade and who have not previously failed of such selection, that must either be selected for promotion by the particular board or be considered as having failed of such selection, in order to maintain a flow of promotion consistent with the terms of service set out in section 5768 of this title and in order best to assure to individuals in succeeding years equality of opportunity for promotion. The Secretary shall determine the number in the zone on the basis of a consideration of the number of vacancies estimated for the next higher grade in the next five years, the number of officers eligible for selection in each of those years, and the terms of service which those officers will have completed.

[(c) The Secretary shall establish a promotion zone in each grade for male officers of the Marine Corps designated for limited duty at the time he convenes a selection board under chapter 543 of this title to consider such officers in that grade for recommendation for promotion to the next higher grade. The promotion zone in each grade shall be composed of that number of the most senior such officers under consideration, who are eligible for selection for promotion to the next higher grade and who have not previously failed of such selection, that must either be selected for promotion by the particular board or be considered as having failed of such selection, in order to maintain a flow of promotions consistent with the terms of service set out in section 5768 of this title and in order best to assure to individuals in succeeding years equality of opportunity for promotion. The Secretary shall determine the number in the zone on the basis of a consideration of the number of vacancies estimated for the next higher grade in each of the next five; years, the number of officers who will be eligible for selection in each of those years, and the terms of service which those officers will have completed.

[(d) The Secretary shall establish a promotion zone in each grade for women officers of the Marine Corps in the manner prescribed in this section for the establishment of promotion zones for male officers.

[§ 5766. Navy; staff corps officers: promotion zones

[(a) Officers in any staff corps not restricted in the performance of duty who have not failed of selection for promotion to the next higher grade are in the promotion zone for officers of their grade and corps when their running mates are in the promotion zone for male line officers not restricted in the performance of duty or for women line officers, as the case may be.

[(b) Male officers in any staff corps designated for limited duty who have not failed of selection for promotion to the next higher grade are in the promotion zone for officers of their grade, corps, and designation, when their running mates are in the promotion zone for male line officers designated for limited duty.

[§ 5767. Officers qualified for specific duties: promotion to flag or general officer grade

[(a) Whenever the Secretary of the Navy determines that there are not enough officers to meet the needs of the service in the grade of rear admiral in the Navy or in the grade of major general or brigadier general in the Marine Corps, who are specially qualified for a type of duty required of officers of the grade concerned, he may direct that, of the total number of officers that a selection board may recommend for promotion to that grade, a specified number shall be officers who are specially qualified for the required type of duty. If, solely as a result of this section, the selection board selects an officer who is junior to the junior officer in the promotion zone, the board shall so certify in its report.

[(b) Each officer who is promoted solely by operation of subsection (a) and who is junior to the junior officer in the promotion zone shall, when one or more officers junior to the junior officer in that promotion zone are promoted pursuant to the report of the next selection board convened after the board which selected him, have his rank adjusted in the grade for which selected according to his relative rank with such other officers in the grade from which they were promoted, unless at the time of his selection there was another officer junior to him selected under provisions other than those of subsection (a). If an officer's rank is to be adjusted under this subsection, the President, when all officers concerned are promoted to the grade for which selected, shall assign to him a later date of rank that will insure the order of rank as provided in this subsection, and the officer shall take rank from the later date. If he is a staff corps officer, he shall have a new running mate assigned to him in accordance with his adjusted rank.

[(c) Whenever the Secretary determines that there is a position of sufficient importance and responsibility to require an incumbent in the grade of rear admiral or brigadier general, and that there is a woman officer of the Navy or the Marine Corps who is best qualified to perform the duties of the position, he may designate that woman officer to hold that position. A woman officer so designated may be appointed by the President, by and with the advice and consent of the Senate, to the grade of rear admiral or brigadier general. Such an appointment is effective on the date the officer reports for the designated duty and terminates on the date she is detached.

[§5768. Navy, male line officers; Marine Corps, male officers: normal terms of service in grade and total commissioned service

[(a) The normal terms of service for male officers in the line of the Navy, other than officers designated for limited duty, and for male officers of the Marine Corps, other than officers designated for limited duty, are:

Grade		*Service in grade*	*Total commissioned service*
Navy	*Marine Corps*		
Captain	Colonel	5 years	30 years.
Commander	Lieutenant Colonel	7 years	25 years.
Lieutenant Commander	Major	6 years	18 years.
Lieutenant	Captain	6 years	12 years.
Lieutenant (junior grade)	First Lieutenant	3 years	6 years.

[(b) The normal terms of service in grade for male officers in the line of the Navy designated for limited duty and for male officers of the Marine Corps designated for limited duty are:

Grade		*Service in grade*
Navy	*Marine Corps*	
Lieutenant Commander	Major	6 years.
Lieutenant	Captain	6 years.
Lieutenant (junior grade)	First Lieutenant	3 years.

[§5769. Navy, male line officers; Marine Corps, male officers: eligibility for promotion

[(a) Male officers in the line of the Navy, and male officers of the Marine Corps, who are recommended for promotion in the report of a selection board convened under chapter 543 of this title are considered as selected for promotion upon the approval of the report by the President. The names of these officers shall be placed on the promotion list for the grade for which selected in the order of their rank at the time of the approval of the report, following the names of any male officers recommended for promotion to the same grade in an earlier approved report who have not yet been promoted.

[(b) Male officers in the line of the Navy and male officers of the Marine Corps may be promoted when they become eligible for promotion under one of the following clauses:

[(1) Officers not restricted in the performance of duty whose names appear on the promotion list are, in the order in which their names appear, eligible for promotion to the next higher grade as vacancies occur in that grade among officers not restricted in the performance of duty.

[(2) Officers designated for limited duty whose names appear on the promotion list are, in the order in which their names appear, eligible for promotion to the next higher grade as vacancies occur in that grade among officers designated for limited duty.

[(3) Captains in the Navy designated for engineering duty, aeronautical engineering duty, or special duty whose names appear on the promotion list are, in the order in which their names appear, eligible for promotion to the grade of rear admiral as vacancies occur in that grade among officers restricted in the performance of duty.

[(4) An officer in the grade of commander or below designated for engineering duty, aeronautical engineering duty, or special duty whose name appears on the promotion list is eligible for promotion to the next higher grade when the line officer not restricted in the performance of duty whose name appears next below his on the promotion list becomes eligible for promotion.

However, an officer in the grade of lieutenant in the Navy designated for engineering duty, aeronautical engineering duty, or special duty is not eligible for promotion to the grade of lieutenant commander until there is a vacancy for him among officers of his designation in the combined grades of captain, commander, and lieutenant commander.

[(c) Each male officer in the line of the Navy and each male officer of the Marine Corps, when promoted to a higher grade, shall be assigned the date of rank and registered number that will give him rank in the order in which his name appeared on the promotion list for that grade.

[§ 5770. Regular Navy; male line officers not restricted to the performance of duty or designated for limited duty: sea or foreign service required

[(a) A male officer on the active list in the line of the Navy who is not restricted in the performance of duty or who is designated for limited duty may not be promoted to the grade of lieutenant commander or above under section 5769 of this title, although otherwise eligible for promotion, until he has had at least two years of sea or foreign service after his name was placed on the promotion list for promotion to the grade in which he is serving.

[(b) The Secretary of the Navy shall determine the types of duty that may be considered sea or foreign service for the purpose of this section.

[§ 5771. Navy, women line officers: Marine Corps, women officers: eligibility for promotion

[(a) Women officers in the line of the Navy and women officers of the Marine Corps who are recommended for promotion in the report of a selection board convened under chapter 543 of this title are considered as selected for promotion upon approval of the report by the President. The names of these officers shall be placed on the promotion list for the grade for which selected in the order of their rank at the time of the approval of the report, following the names of any women officers recommended for promotion to the same grade in an earlier approved report who have not yet been promoted.

[(b) Women officers in the line of the Navy and women officers of the Marine Corps who are on a promotion list for any grade above lieutenant (junior grade) in the Navy or first lieutenant in the Marine Corps are, in the order in which their names appear, eligible for promotion to the grade concerned as vacancies occur in that grade.

[(c) When promoted to a higher grade, each woman line officer of the Navy and each woman officer of the Marine Corps shall be assigned the date of rank and registered number that will give her rank in the order in which her name appeared on the promotion list for that grade.

[§ 5772. Navy; staff corps officers: eligibility for promotion to grade of rear admiral

[Officers in any staff corps recommended for promotion to the grade of rear admiral in the report of a selection board convened under chapter 543 of this title are considered as selected for promotion upon approval of the report by the President. The names of these officers shall be placed on the promotion list for the grade of rear admiral in the corps concerned. Each such officer may be promoted when a vacancy occurs in the grade of rear admiral in his corps. When promoted, each staff corps officer shall have the same date of rank as the running mate assigned to him in the grade of rear admiral. However, if the staff corps officer is promoted to the grade of rear admiral before the line officer who is to be his running mate in that grade is so promoted, the staff corps officer shall have, as his interim date of rank, the date of the occurrence of the vacancy that he was promoted to fill. When his running mate is promoted to the grade of rear admiral, the staff corps officer shall have the same date of rank as that assigned to his running mate.

[§ 5773. Navy; staff corps officers: eligibility for promotion to grades below rear admiral

[(a) Officers in any staff corps recommended for promotion to a grade below rear admiral in the report of a selection board convened under chapter 543 of this title are considered as selected for promotion upon the approval of the report by the President. The names of these officers shall be placed on the promotion list for the grade and corps concerned.

[(b) Each staff corps officer whose name is placed on a promotion list under subsection (a) is eligible for promotion to the grade for which selected when the line officer who is to be his running mate in the higher grade becomes eligible for promotion to that grade. When promoted, each such staff corps officer shall be assigned the same date of rank as that of his running mate in the higher grade.

[§ 5776. Failure of selection

[(a) Subject to subsection (b), an officer in the line of the Navy, or an officer of the Marine Corps, who is eligible for consideration for promotion by a selection board convened under chapter 543 of this title and is not selected for promotion is considered as having failed of selection for promotion if he is, or is senior to the junior officer of his category in the promotion zone established in his grade under section 5764 or section 5765 of this title. Such an officer is not considered as having failed of selection if he is junior to the junior officer of his category in the promotion zone in his grade.

[(b) A male officer in the line of the Navy restricted in the performance of duty serving in the grade of captain who is eligible for consideration for promotion by a selection board convened under chapter 543 of this title and who is not selected for promotion is not considered as having failed of selection. There are no promotion zones for such officers for promotion to the grade of rear admiral.

[(c) An officer in a staff corps of the navy who is eligible for consideration for promotion by a selection board convened under chapter 543 of this title and is not selected for promotion is considered as having failed of selection for promotion if he is, or is senior to, the junior officer of his category in the promotion zone established in his grade and corps under section 5766 of this title. Such an officer is not considered as having failed of selection if he is junior to the junior officer of his category in the promotion zone in his grade and corps.

[§ 5777. Removal from promotion list

[(a) The President may remove the name of any officer from a promotion list.

[(b) If the Senate rejects an officer's appointment to the grade for which he has been recommended, the officer's name shall be removed from the promotion list.

[(c) An officer whose name is removed from a promotion list under subsection (a) or (b) continues to be eligible for consideration for promotion. If he is recommended for promotion by the next selection board, and the report of the board is approved by the President, his name shall be placed on the promotion list without prejudice and, if he is promoted, he shall have the same lineal position and date of rank that he would have had if his name had not been removed. However, if the officer is not recommended for promotion in the approved report of the next selection board, or if he is so recommended but the President removes his name from the promotion list or the Senate rejects his appointment, he is considered for all purposes as having twice failed of selection for promotion.

[§ 5778. Promotions under preceding sections: temporary; permanent

[Promotions under the preceding sections of this chapter of women officers selected by boards convened under section 5704 of this title shall be made by permanent appointments. Promotions of all other officers under the preceding sections of this chapter shall be made by—

[(1) temporary appointments when sections 5442, 5443, and 5444 of this title are applicable; and

[(2) permanent appointments when sections 5442, 5443, and 5444 of this title are inapplicable.

[§ 5779. Temporary promotions: termination

[The President may terminate any temporary appointment made under the preceding sections of this chapter.

[§ 5780. Regular Navy, male line officers; Regular Marine Corps, male officers: permanent promotion

[(a) The President may fill vacancies in any grade in the line of the Regular Navy, as determined by computations under section 5447 of this title, by making permanent appointments in that grade from officers on the active list in the line of the Navy who—

[(1) have been temporarily promoted to that grade under the preceding sections of this chapter; or

[(2) are on the promotion list for promotion to that grade under the preceding sections of this chapter.

[(b) The President may fill vacancies in any grade in the Regular Marine Corps, as determined by computations under section 5448 of this title, by making permanent appointments in that grade from officers on the active list of the Marine Corps who—

[(1) have been temporarily promoted to that grade under the preceding sections of this chapter; or

[(2) are on the promotion list for promotion to that grade under the preceding sections of this chapter.

[(c) An officer may not be permanently appointed under this section in the grade of captain in the Navy or colonel in the Marine Corps before the fiscal year in which he and all officers senior to him on the lineal list will have completed 18 years of total commissioned service as computed under section 6387 of this title.

[(d) Officers shall be permanently appointed under this section in the order of their lineal position or, if they have not been temporarily appointed in the grade concerned, in the order in which their names appear on the promotion list for that grade.

[§ 5781. Regular Navy; staff corps officers: permanent promotion to grade of rear admiral

[(a) The President may fill vacancies in the grade of rear admiral in any staff corps of the Regular Navy, as determined by computations under section 5449 of this title, by making permanent appointments in that grade from officers on the active list in the corps concerned who—

[(1) have been temporarily promoted to the grade of rear admiral under the preceding sections of this chapter; or

[(2) are on the promotion list for promotion to the grade of rear admiral under the preceding sections of this chapter.

[(b) Officers shall be permanently appointed under this section in the order of their lineal position or, if they have not been temporarily appointed in the grade of rear admiral, in the order in which their names appear on the promotion list for promotion to that grade.

[(c) Each officer permanently appointed in the grade of rear admiral under this section shall be given the same date of rank as his running mate if his running mate has been permanently appointed in that grade. If his running mate has not been permanently appointed in the grade of rear admiral, the staff corps officer shall be given, as his interim date of rank, the date of rank stated in his temporary commission. When his running mate is permanently appointed in the grade of rear admiral, the staff corps officer shall be given the same date of rank as that given to his running mate.

[§ 5782. Regular Navy; staff corps officers: permanent promotion to grades below rear admiral

[(a) Permanent appointments may be made in any grade below rear admiral in any staff corps of the Regular Navy from officers on the active list in the corps concerned who—

[(1) have been temporarily promoted to the grade concerned under the preceding sections of this chapter; or

[(2) are on the promotion list for promotion to that grade under the preceding sections of this chapter.

[(b) A staff corps officer whose running mate is on the active list of the Navy may be permanently appointed in a grade under this section when his running mate is permanently appointed in that grade under section 5780 of this title. A staff corps officer so appointed is considered as appointed simultaneously with his running mate and he shall be given the same date of rank as his running mate. A staff corps officer whose running mate is not on the active list of the Navy may be permanently appointed in a grade under this section when the most senior of those male line officers on the active list who are junior to his running mate is permanently appointed in that grade under section 5780 of this title. A staff corps officer so appointed is considered as appointed simultaneously with that line officer and he shall be given the same date of rank as that line officer.

[(c) If a staff corps officer is on a promotion list for promotion under the preceding sections of this chapter and his running mate in the grade in which he is serving is not on such a promotion list, the line officer who is to be the running mate of the staff corps officer in the next higher grade is considered to be his running mate for the purpose of subsection (b).

[§ 5783. Naval Reserve and Marine Corps Reserve: permanent promotion

[(a) Permanent appointments may be made in any grade in the line of the Naval Reserve from officers holding permanent appointments in the grade of ensign or above in the line of the Naval Reserve who are on active duty and who—

[(1) have been temporarily promoted to the grade concerned under the preceding sections of this chapter; or

[(2) are on the promotion list for promotion to the grade concerned under the preceding sections of this chapter.

An officer in the line of the Naval Reserve may be permanently appointed in a grade in the Naval Reserve under this subsection when the most junior of those male line officers on the active list who are senior to him is permanently appointed in that grade in the Regular Navy. The reserve officer is considered for all purposes to have been appointed simultaneously with the regular officer and he shall be given the same date of rank as the regular officer.

[(b) Permanent appointments may be made in any grade in the Marine Corps Reserve from officers holding permanent appointments in the grade of second lieutenant or above in the Marine Corps Reserve who are on active duty and who—

[(1) have been temporarily promoted to the grade concerned under the preceding sections of this chapter; or

[(2) are on the promotion list for promotion to the grade concerned under the preceding sections of this chapter.

An officer of the Marine Corps Reserve may be permanently appointed in a grade in the Marine Corps Reserve under this subsection when the most junior of the male officers on the active list of the Marine Corps who are senior to him is permanently appointed in that grade in the Regular Marine Corps. The reserve officer is considered for all purposes to have been appointed simultaneously with the regular officer and he shall be given the same date of rank as the regular officer.

[(c) Permanent appointments may be made in any grade in the Naval Reserve in any staff corps from officers holding permanent appointments in the trade of ensign or above in the Naval Reserve in the corps concerned who—

[(1) have been temporarily promoted to the grade concerned under the preceding sections of this chapter; or

[(2) are on the promotion list for promotion to the grade concerned under the preceding sections of this chapter.

A reserve staff corps officer whose running mate is on the active list of the Navy may be permanently appointed in a grade in the Naval Reserve under this subsection when his running mate is permanently appointed in that grade in the Regular Navy. A reserve staff corps officer whose running mate is not on the active list of the Navy may be permanently appointed in a grade in the Naval Reserve under this subsection when the most senior of those male line officers on the active list of the Navy who are junior to his running mate is permanently appointed in that grade in the Regular Navy. If a reserve staff corps officer is on a promotion list for promotion under the preceding sections of this chapter and his running mate in the grade in which he is serving is not on such a promotion list, the line officer who is to be the running mate of the staff corps officer in the next higher grade is considered to be his running mate for the purpose of this subsection. A reserve staff corps officer permanently appointed in a grade under this subsection is considered as appointed simultaneously with the line officer upon whom his eligibility for permanent appointment depends, and he shall be given the same date of rank as that line officer.

[§5784. Navy, ensigns; Marine Corps, second lieutenants: temporary promotion

[(a) Promotions may be made under this section only when the number of male officers serving on active duty in the grade of ensign and above in the line of the Navy exeeds the number of male officers on the active list in the line of the Navy.

[(b) Officers serving on active duty in the grade of ensign in the Navy may be promoted to the grade of lieutenant (junior grade) and officers serving on active duty in the grade of second lieutenant in the Marine Corps may be promoted to the grade of first lieutenant.

[(c) Promotions under this section shall be made by temporary appointments.

[(d) The President may terminate any temporary appointment made under this seciton.

[(e) Temporary appointments under this section do not change the permanent, probationary, or acting status of members so appointed, prejudice them in regard to other promotion or appointment, or abridge their rights or benefits. A member who receives a temporary appointment under this section may not suffer any reduction in the pay and allowances to which he was entitled because of his permanent status at the time of his temporary appointment, or any reduction in the pay and allowance to which he was entitled under a prior temporary appointment in a lower grade.

[(f) Women officers appointed under section 5590 of this title may not be promoted under this section.

[§5785. Suspensions: preceding sections

[(a) The President may suspend any provision of the preceding sections of this chapter relating to officers serving in the grades of lieutenant and lieutenant (junior grade) in the Navy, other than women officers appointed under section 5590 of this title, or relating to male officers serving in the grades of captain and first lieutenant in the Marine Corps during any period when–

[(1) the number of male officers serving on active duty in the grade of ensign and above in the line of the Navy exceeds the number of male officers on the active list in the line of the Navy; and

[(2) he determines that the needs of the service so require.

[(b) During a war or national emergency, the President may suspend any provision of the preceding sections of this chapter, relating to officers of the Navy and the Marine Corps, other than women officers appointed under section 5590 of this title. Such a suspension may not continue beyond September 30 of the fiscal year following that in which the war or national emergency ends.

[§5786. Application: preceding sections

[(a) Officers in the following categories are ineligible for promotion under the preceding sections of this chapter:

[(2) Retired officers.

[(3) Officers of the Naval Reserve and the Marine Corps Reserve on inactive duty.

[(4) Officers of the Naval Reserve and the Marine Corps Reserve assigned to active duty for training.

[(5) Officers of the Naval Reserve and the Marine Corps Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve or the Marine Corps Reserve.

[(6) Officers of the Naval Reserve and the Marine Corps Reserve ordered to temporary active duty to prosecute special work.

[(7) temporary officers serving in grades above chief warrant officer, W–4, whose only appointment to any such grade was made under section 5597 of this title.

[(b) Offices listed in subsection (a) are not counted as officers serving on active duty for the purpose of sections 5784 and 5785 of this title.

[(c) For the purpose of the preceding sections of this chapter, an officer serving in a grade to which he was appointed for a period of limited duration or in a grade to which he was temporarily promoted under section 5787 or 5787d of this title is considered as serving in the grade he would hold if he had not received any such appointment or promotion.

[§5787. Temporary promotions in time of war or national emergency

(a) Promotions may be made under this section only in time of war or during a national emergency declared by the President.

[(b) The President may promote to a higher grade any member of the naval service serving on active duty in the Navy in the grade of ensign or above or serving on active duty in the Marine Corps in the grade of second lieutenant or above. Such promotions shall be made under such regulations as the President prescribes and in such numbers as he determines the needs of the service require.

[(c) The Secretary of the Navy, under such regulations as he prescribes, may promote to the next higher warrant officer grade any member of the naval service serving on active duty in a warrant officer grade below chief warrant officer, W-4.

[(d) The grade of commodore in the Navy is established for the purposes of this section.

[(e) Promotions under this section shall be made by temporary appointments. Each such appointment to a grade above lieutenant commander in the Navy or to a grade above major in the Marine Corps shall be made by the President, by and with the advice and consent of the Senate. Each such appointment to a warrant officer grade shall be made by the Secretary, by commission. All other temporary appointments under this section shall be made by the President alone.

[(f) Temporary promotions under this section to the grade of lieutenant or above in the Navy or to the grade of captain or above in the Marine Corps may be made only upon the recommendation of a board of officers convened for that purpose. In addition to recommending officers for promotion, a board so convened shall make the report required by section 6395 of this title.

[(g) Each temporary appointment under this section, unless expressly declined, is, without formal acceptance, regarded as accepted on the date made.

[(h) Temporary appointments under this section do not change the permanent, probationary, or acting status of members so appointed, prejudice them in regard to other promotion or appointment, or abridge their rights or benefits.

[(i) Temporary appointment under this section are effective for such periods as the President determines. However, no such appointment may be effective later than—

[(1) six months after the end of the war or national emergency; or

[(2) the date the appointee is released from active duty;

whichever is earlier.

[(j) When his temporary appointment under this section is terminated or expires, each member of the naval service on active duty shall have the grade he would hold if he had not received any such appointment.

[§5787a. Navy; lieutenants (junior grade) in Medical and Dental Corps: temporary promotion

[(a) Notwithstanding any other provision of law, an officer in the Medical Corps or the Dental Corps may be temporarily promoted to the grade of lieutenant at any time after the first anniversary of the date upon which he graduated from medical, osteopathic, or dental school, as the case may be.

[(b) The Secretary of the Navy may prescribe regulations for the administration of this section.

[§5787b. Navy, women ensigns; Marine Corps, women second lieutenants: temporary promotion

[(a) A woman officer serving on active duty in the grade of ensign in the Navy or second lieutenant in the Marine Corps may be temporarily promoted to the next higher grade under regulations prescribed by the President.

[(b) The permanent appointment of a woman officer who is temporarily promoted under subsection (a) is not vacated by that temporary promotion.

[§5787c. Navy and Marine Corps; warrant officers designated for limited duty: temporary promotion

[(a) Warrant officers may be temporarily promoted to higher warrant officer grades under such regulations as the Secretary of the Navy may prescribe.

[(b)(1) Officers designated for limited duty may be temporarily promoted to a higher grade under such regulations as the Secretary may prescribe.

[(2) No promotion may be made under this subsection after September 30, 1982.

[§5787d. Navy lieutenants: temporary promotion

[(a) Line officers not restricted in the performance of duty in the grade of lieutenant, possessing skills in a critical shortage and serving in lieutenant commander billets requiring such skills, may be temporarily promoted to lieutenant commander under such regulations as the Secretary of the Navy may prescribe. Temporary appointment under this section shall be made by the President alone.

[(b) Temporary appointments under this section do not change the permanent, probationary, or acting status of members so appointed, prejudice them in regard to other promotions or appointments, or abridge their rights or benefits.

[(c) Temporary promotions under this section may be made only upon the recommendation of a board of officers convened for that purpose. In addition to recommending offices for promotion, a board so convened shall make the report required by section 6384 of this title.

[(d) Each temporary appointment under this section, unless expressly declined, is, without formal acceptance, regarded as accepted on the date made, and the member so appointed is entitled to the pay and allowances of the grade to which promoted from that date.

[(e) Temporary appointments under this section will terminate upon an officer's detachment from a qualifying billet so designated by the Secretary of the Navy. When an officer, whose name is on a promotion list as a result of selection to lieutenant commander other than under this section, is detached, an appointment will be issued to include the interim period between the subject officer's detachment from the qualifying billet and the date of promotion as a result of selection board action.

[(f) When his temporary promotions under this section is terminated or expires, each member of the naval service on active duty shall have the grade he would hold if he had not received any such appointment.

[(g) No appointments may be under this section after September 30, 1982.

[§5788. Navy, ensigns; Marine Corps, second lieutenants: eligibility for promotion

[(a) Each officer, other than a retired officer, serving on active duty in the Navy or the Marine Corps who holds a permanent appointment in the grade of ensign or second lieutenant may be permanently promoted to the next higher grade on the third anniversary of his date of rank as ensign or second lieutenant.

[(b) Each officer holding a temporary appointment in the grade of ensign or second lieutenant, unless he is promoted earlier, may be temporarily promoted to the next higher grade on the third anniversary of his date of rank as ensign or second lieutenant.

[§5789. Officers receiving thanks of Congress

[(a) An officer in the line of the Navy or an officer of the Marine Corps may be advanced one grade if, upon recommendation of the President by name, he receives the thanks of Congress for highly distinguished conduct in conflict with the enemy or for extraordinary heroism in the line of his profession.

[(b) An officer may be promoted under this section even though there are no vacancies in the higher grade. He shall be carried as an additional number in that grade until the actual number of officers in that grade falls below the prescribed number.

[§5791. Appointing power

[(a) Except as provided in section 5787 and 5787d of this title, permanent and temporry appointments under this chapter in the Regular Navy and in the Regular Marine Corps shall be made by the President, by and with the advice and consent of the Senate.

[(b) Permanent and temporary appointments under this chapter in a grade above lieutenant commander in the Naval Reserve and in a grade above major in the Marine Corps reserve shall be made by the President, by and with the advice and consent of the Senate. Except as provided in sections 5787 and 5790 of this title all other permanent and temporary appointments under this chapter in the Naval Reserve and in the Marine Corps Reserve shall be made by the President alone.

[§5792. Oath of office not required

[An officer of the naval service who has served continuously since he subscribed to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon his promotion to a higher grade.

[§5793. Authorized strengths in grade and promotions of Medical Corps and Dental Corps officers

[Notwithstanding any other provisions of this title, the authorized strengths of officers of the Medical Corps and Dental Corps in grade below rear admiral, and the selection and promotion of those officers to such grades, shall be based on the needs of the Navy, as determined by the Secretary under regulations to be prescribed by the Secretary of Defense.

[CHAPTER 547—EXAMINATIONS FOR PROMOTION

[Sec.

[5861. Regular Navy and Regular Marine Corps: physical examination.
[5862. Navy and Marine Corps: mental, moral, and professional examinations; examining board; board members; procedure.
[5864. Discharge of officer not morally qualified.
[5865. Effect of failure to qualify professionally.
[5867. Naval Reserve and Marine Corps reserve officers: moral, professional, and physical examinations.

[§ 5861. Regular Navy and Regular Marine Corps: physical examination

[Before an officer of the Regular Navy or the Regular Marine Corps may be promoted to a grade above ensign in the Navy or second lieutenant in the Marine Corps, he must qualify for promotion by passing such physical examination as the Secretary of the Navy may prescribe. However, such an officer may not be excluded from a promotion to which he would otherwise be entitled if in his case the Secretary, or the Chief of the Bureau of Medicine and surgery when authorized by the Secretary, determines that—

[(1) his physical disqualification was caused by wounds received in the line of duty; and

[(2) these wounds do not incapacitate him for the performance of useful service in the higher grade.

[§ 5862. Navy and Marine Corps: mental, moral, and professional examination; examining board; board members: procedure

[(a) Before an officer on the active list of the Navy or the Marine Corps may be promoted premanently to the grade of lieutenant (junior grade) or first lieutenant, he must demonstrate to the satisfaction of an examining board such mental, moral, and professional qualifications as the Secretary of the Navy may prescribe.

[(b) Before an officer serving on active duty in a grade above ensign and below captain in the Navy or in a grade above second lieutenant and below colonel in the Marine Corps may be promoted to the next higher grade, he must demonstrate to the satisfaction of an examining board such professional qualifications as the Secretary may prescribe.

[(c) Examining boards for the examination of officers under this section shall be convened from time to time by the Secretary or, when authorized by the Secretary, by the senior officer present, or other commanding officer, on a foreign station. A board convened by a senior officer present, or other commanding officer, on a foreign station may examine only officers who are under the command of the convening authority and who are directed to appear before the board.

[(d) Each examining board convened under this section shall be composed of commissioned officers of the naval service. At least three members must act in each case. A member may not act in the case of an officer senior to him.

[(e) The Secretary shall prescribe regulations governing the procedures to be followed by examining boards, including regulations to insure a full and fair hearing to officers whose cases come before the boards and who demand a hearing.

[(f) The Secretary may suspend the operation of any part of this section in connection with the promotion of officers under section 5787 of this title.

[§ 5864. Discharge of officer not morally qualified

[An officer who is found by an examining board convened under section 5862 of this title to be, from any cause arising from his own misconduct, not morally qualified to perform the duties of the grade for which he is being examined shall, if the finding is approved by the President, be discharged from the naval service with not more than one year's pay.

[§ 5865. Effect of failure to qualify professionally

[(a) An officer who is certified as not professionally qualified by an examining board convened under section 5862 of this title shall be suspended from promotion for six months from the date of approval of that certification. At the expiration of that period he shall be reexamined. If he is found professionally qualified and if he is otherwise qualified, he shall be promoted and assigned the date of rank in the higher grade and the lineal position to which he would have been entitled if he had not been suspended, and he is entitled to pay and allowances of the higher grade from the date he first became eligible for promotion to that grade.

[(b) An officer of the Navy in the grade of lieutenant (junior grade) or above or an officer of the Marine Corps in the grade of first lieutenant or above who is found not professionally qualified upon his reexamination is considered as having twice failed of selection for promotion.

[(c) An officer of the Navy in the grade of ensign or an officer of the Marine Corps in the grade of second lieutenant who is found not professionally qualified upon his reexamination shall be honorably discharged with severance pay computed on the basis of two months' basic pay at the time of discharge multiplied by the number of years of his active commissioned service in the naval service, exclusive of training duty, but the payment may not be more than one year's basic pay.

[§ 5867. Naval Reserve and Marine Corps Reserve; officers: moral, professional, and physical examinations

[(a) Before an officer of the Naval Reserve or the Marine Corps Reserve may be promoted to the next higher grade he must—

[(1) qualify for promotion by passing such moral, professional, and physical examinations as the Secretary of the Navy prescribes; and

[(2) attain the minimum number of points, credited under section 1332 of this title, prescribed by the Secretary of the Navy with the approval of the Secretary of Defense.

[(b) The physical standards for the promotion of reserve officers prescribed by the Secretary of the Navy under this section shall be the same as those prescribed by him for the retention of officers in the Naval Reserve and the Marine Corps Reserve.

[(c) This section does not exclude from the promotion to which he would otherwise be entitled any reserve officer in whose case a medical board reports that—

[(1) his physical disqualification for duty at sea or in the field was caused by wounds received in the line of duty; and

[(2) these wounds do not encapacitate him for other duties in the grade to which he is to be promoted.]

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CHAPTER 549—RESERVE PROMOTIONS

Sec.

5891. Officers who may be promoted under this chapter.
5892. Numbers that may be promoted.
5893. Selection boards: composition.
5894. Selection boards: oath of members.
5895. Selection boards: information furnished to boards.
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5911. Promotions: temporary; permanent.
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§ 5891. Officers who may be promoted under this chapter

(a) To be eligible for consideration for promotion by a selection board convened under this chapter, or for promotion under this chapter, an officer must be in an active status in the Naval Reserve or the Marine Corps Reserve.

(b) Except as provided in subsections [(c), (d), and (e), a reserve officer who is on a lineal list maintained under section 5504] *(c) and (d), a reserve officer who is on the active-duty list maintained under section 620* of this title is ineligible for promotion under this chapter and for consideration by a selection board convened under this chapter.

[(c) A reserve officer who was eligible for consideration for promotion by a selection board convened under chapter 543 of this title, but whose name was not furnished to that board, may be considered by the corresponding selection board convened under this chapter to consider officers of this grade for promotion to the next higher grade and may be promoted under this chapter even though he is on a lineal list at the time of his selection and promotion.]

[(d)] *(c)* A reserve officer who has been recommended for promotion in the approved report of a selection board convened under this chapter, and who is placed on a lineal list before he is promoted, may be promoted under this chapter, notwithstanding the fact that he is on a lineal list at the time of promotion.

[(e)] *(d)* A reserve officer who has been recommended for promotion in the approved report of a selection board convened under [chapter 543] *chapter 36* of this title and who is removed from the [lineal list] *active-duty list* before he is promoted may be promoted under this chapter, notwithstanding the fact that he was on [a lineal list] *the active-duty list* when selected for promotion.

[(f)] *(e)* A reserve officer whose name was furnished to a selection board convened under [chapter 543] *chapter 36* of this title, and who is removed from the [lineal list] *active-duty list* before the corresponding selection board is convened under this chapter to consider officers of his grade for promotion to the next higher grade, is ineligible for consideration by the latter board.

[(g) For the purpose of this section, a woman officer who is eligible for consideration for promotion by a selection board convened under chapter 543 of this title shall be considered to be on a lineal list.]

§5892. Numbers that may be promoted

Each year the Secretary of the Navy shall prescribe the number of officers in each grade in the Naval Reserve and the Marine Corps Reserve that may be promoted in that year to the next higher grade under this chapter. He shall prescribe for each grade the number that he determines to be necessary to provide—

(1) equitable opportunity for promotion among succeeding groups of reserve officers; and

(2) an adequate continuing strength of reserve officers in an active status.

However, the Secretary may not prescribe numbers that will cause the number of reserve officers in an active status holding permanent appointments in any grade to exceed the number authorized for that grade in section 5457 or section 5458 of this title. With respect to the numbers of reserve officers in the staff corps that may be promoted, the Secretary shall prescribe numbers that will cause the relationship between line and staff corps officers in an active status in the Naval Reserve to conform to [that prescribed for line and staff corps officers on the active list of the Navy] *established by the Secretary for regular line and staff corps officers on the active-duty list under other provisions of this title.*

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§5896. Selection boards: officers to be recommended for promotion

(a) Of the officers considered for promotion by a selection board convened under this chapter, the board shall recommend for promotion, as appropriate–

(1) those eleigible male officers in the line of the Naval Reserve or eligible male officers of the Marine Corps Reserve whom the board considers best fitted for promotion;

(2) those eligible male officers of the Naval Reserve in the Supply Corps or the Civil Engineer Corps whom the board considers best fitted for promotion;

(3) those eligible male officers of the Naval Reserve and eligible women officers appointed under section 5581 of this title *before the effective date of the Defense Officer Personnel Management Act*, under consideration for promotion to the grade of commander or above in the Medical Corps, the Judge Advocate General's Corps, the Chaplain Corps, the Dental Corps, or the Medical Service Corps whom the board considers best fitted for promotion;

(4) those eligible male officers of the Naval Reserve and women officers appointed under section 5581 of this title *before the effective date of the Defense Officer Personnel Management Act*, under consideration for promotion to the grade of lieutenant commander or below in the Medical Corps, the Judge Advocate General's Corps, the Chaplain Corps, the Dental Corps, or the Medical Service Corps whom the board considers fitted for promotion;

(5) those eligible officers of the Naval Reserve under consideration for promotion to the grade of captain or commander in the Nurse Corps whom the board considers best fitted for promotion;

(6) those eligible officer of the Naval Reserve under consideration for promotion to the grade of lieutenant commander or lieutenant in the Nurse Corps whom the board considers fitted for promotion;

(7) those eligible women officers of the Naval Reserve, other than officers in the Nurse Corps and officers appointed under section 5581 of this title *before the effective date of the Defense Officer Personnel Management Act*, under consideration for promotion to the grade of captain, commander, or lieutenant commander, and those eligible women officers of the Marine Corps Reserve under consideration for promotion to the grade of colonel, lieutenant colonel or major, whom the board considers best fitted for promotion; and

(8) those eligible women officers of the Naval Reserve, other than officers in the Nurse Corps and officers appointed under section 5581 of this title *before the effective date of the Defense Officer Personnel Management Act*, under consideration for promotion to the grade of lieutenant, and those eligible women officers of the Marine Corps Reserve under consideration for promotion to the grade of captain, whom the board considers qualified for promotion.

(b) The recommendation of a selection board with respect to any women line officer of the Naval Reserve or any woman officer of the Marine Corps Reserve shall be based on her comparative fitness for the duties to which women officers are normally assigned in the line of the Navy or in the Marine Corps. The recommendation of a selection board with respect to any woman officer of the Naval Reserve in a staff corps, other than an officer in the Nurse Corps or an officer appointed under section 5581 of this title *before the effective date of the Defense Officer Personnel Management Act*, shall be based on her comparative fitness for the duties to which women officers are normally assigned in her staff corps.

(c) Administrative staff duty, duty in aviation, or duty in any technical specialty performed by an officer of the Marine Corps Reserve shall be given weight by the selection board in determining his fitness for promotion equal to that given line duty equally well performed.

(d) The status of having once failed of selection for promotion to a grade does not prejudice an officer with respect to his qualifications, his fitness for the naval service, or his eligibility for selection for promotion to that grade by the next succeeding selection board.

(e) The total number of officers that may be recommended for promotion to any grade may not exceed the number furnished the board concerned by the Secretary of the Navy.

(f) An officer may not be recommended for promotion unless he receives the recommendation of a majority of the total membership of the board concerned.

§ 5897. Selection boards: reports; certification required

(a) Each board convened under this chapter shall submit a report in writing, signed by all the acting members thereof , and shall certify in its report that the board has carefully considered the case of each officer whose name was furnished to it under section 5895 of this title.

(b) A board convened under this chapter that recommends officers in any of the following categories for promotion shall certify in its report that, in the opinion of a majority of the members of the board, the officers recommended are selected as best fitted to assume the duties of the next higher grade:

(1) Male officers in the line of the Naval Reserve.

(2) Male officers of the Marine Corps Reserve.

(3) Male officers of the Naval Reserve in the Supply Corps.

(4) Male officers of the Naval Reserve in the Civil Engineer Corps.

(5) Officers of the Naval Reserve in the Nurse Corps in the grade of lieutenant commander or above;

(6) Women officers in the line or staff corps of the Naval Reserve in the grade of lieutenant or above, other than officers in the Nurse Corps and officers appointed under section 5581 of this title *before the effective date of the Defense Officer Personnel Management Act.*

(7) Women officers of the Marine Corps Reserve in the grade of captain or above.

(8) Officers of the Naval Reserve in any staff corps in the grade of lieutenant commander or above.

(c) A board convened under this chapter that recommends officers in any of the following categories for promotion shall certify in its report that, in the opinion of a majority of the members of the board, the officers recommended are selected as fitted to assume the duties of the next higher grade:

(1) Male officers of the Naval Reserve, and women officers appointed under section 5581 of this title, in the grade of lieutenant or lieutenant (junior grade) in the Medical Corps, the Judge Advocate General's Corps, the Chaplain Corps, the Dental Corps, or the Medical Service Corps.

(2) Officers of the Naval Reserve in the grade of lieutenant or lieutenant (junior grade) in the Nurse Corps.

(d) A board convened under this chapter that recommends officers in any of the following categories for promotion shall certify in its report that, in the opinion of a majority of the members of the board, the officers recommended are selected as qualified for promotion:

(1) Women officers in the line and staff corps of the Naval Reserve in the grade of lieutenant (junior grade), other than officers in the Nurse Corps and officers appointed under section 5581 of this title *before the effective date of the Defense Officer Personnel Management Act.*

(2) Women officers of the Marine Corps Reserve in the grade of first lieutenant.

§ 5898. Selection boards: reports; submission to President

(a) The report of a board convened under this chapter shall be submitted to the President for his approval or disapproval. If any officer recommended by the board is not acceptable to the President, the board shall be informed of the name of that officer and shall, except as provided in subsection (b) of this section, recommend another eligible officer for promotion.

(b) If any woman officer, other than an officer in the Nurse Corps or an officer appointed under section 5581 of this title *before the effective date of the Defense Officer Personnel Management Act:* who is recommended for promotion to the grade of lieutenant in the Naval Reserve or to the grade of captain in the Marine Corps Reserve, is not acceptable to the President, the board shall be informed, the name of that officer shall be removed from the report of the board, and no additional recommendation may be made.

§ 5899. Eligibility for consideration by selection board: promotion zones

(a) A male officer of the Naval Reserve, or a woman officer appointed under section 5581 of this title *before the effective date of the Defense Officer Personnel Management Act* is in the promotion zone and is eligible for consideration for promotion to the next higher grade by a selection board convened under this chapter when his running mate is in or above the promotion zone established for his grade under [section 5764] *chapter 36* of this title. However, an officer in the grade of captain *or above* is eligible for consideration for promotion when his running mate is eligible for consideration for promotion. When more than one officer in the grade of captain is to be selected for promotion from among line officers or from among officers in any one staff corps, at least one-half of the officers selected in the category concerned must be officers who are in the promotion zone or senior to such officers.

(b) A male officer of the Marine Corps Reserve is in the promotion zone and is eligible for consideration for promotion to the next higher grade by a selection board convened under this chapter when any male officer of the Marine Corps Reserve on the [lineal list] *active-duty list* who is junior to him is in or above the promotion zone established for his grade under [section 5765] *chapter 36* of this title or when his running mate is in or above that zone. However, an officer in the grade of colonel is eligible for consideration for promotion when his running mate is eligible for consideration for promotion. When more than one officer in the grade of colonel is to be selected for promotion, at least one-half of the officers selected must be officers who are in the promotion zone or senior to such officers.

(c) A woman officer of the Naval Reserve, other than an officer in the Nurse Corps or an officer appointed under section 5581 of this title *before the effective date of the Defense Officer Personnel Management Act*, is in the promotion zone and is eligible for consideration for promotion to the next higher grade by a selection board convened under this chapter when any woman officer of the Naval Reserve who is junior to her is in or above the promotion zone established for her grade under [section 5764] *chapter 36* of this title or when her running mate is in or above that zone.

(d) A woman officer of the Marine Corps Reserve is in the promotion zone and is eligible for consideration for promotion to the next higher grade by a selection board convened under this chapter when any woman officer of the Marine Corps Reserve who is junior to her is in or above the promotion zone established for her grade under [section 5765] *chapter 36* of this title or when her running mate is in or above that zone.

(e) An officer of the Naval Reserve in the Nurse Corps is eligible for consideration for promotion to the next higher grade by a selection board convened under this chapter when the person is senior to the junior officer on the [lineal list] *active-duty list* of the Nurse Corps who has been selected for promotion to that grade by a selection board convened under [section 5702] *chapter 36* of this title.

(f) An officer who becomes eligible for consideration for promotion under this section remains so eligible while he is in an active status, regardless of failures of selection for promotion. However, a selection board convened under this chapter may not consider for promotion to the next higher grade an officer whose name is on the promotion list for that grade as a result of his selection by an earlier board convened under this chapter or by a board convened under [chapter 543] *chapter 36* of this title.

(g) The Secretary of the Navy may withhold from consideration by a selection board the name of an officer who is otherwise eligible for consideration for promotion under this section but who has failed to meet the requirements for eligibility prescribed by the Secretary.

(h) Notwithstanding any other provision of this title, a reserve commissioned officer in a permanent grade above chief warrant officer, W-4, who has been in an inactive status may not be considered for promotion until at least one year after the date he is returned to an active status.

§ 5901. Numbers that may be recommended for promotion

(a) The Secretary of the Navy shall prescribe, subject to section 5892 of this title, and shall furnish to the appropriate selection board convened under this chapter, the number of officers in each category that the Board may recommend for promotion.

(b) Within the number to be recommended that the Secretary furnishes to a selection board considering line officers of the Naval Reserve for promotion to any grade, the Secretary may specify numbers of officers of stated qualifications and experience that are required to meet mobilization needs in that grade.

[(c) The numbers furnished to selection boards under this section shall be determined by the Secretary in accordance with the procedures prescribed in sections 5756–5763 of this title, except as may be necessary, in the discretion of the Secretary, to adapt those procedures to the reserve components.]

§ 5902. Promotion lists; eligibility for promotion; date of rank

(a) Officers of the Naval Reserve and the Marine Corps Reserve who are recommended for promotion in the report of a selection board convened under this chapter are considered as selected for promotion upon approval of the report by the President. The names of these officers shall be placed on the promotion list for officers of their grade.

(b) An officer of the Naval Reserve whose name is on a promotion list established under this section is eligible for promotion to the grade for which selected when the officer who is to be his running mate in the higher grade becomes eligible for promotion under [chapter 545] *chapter 36* of this title. When promoted, he shall be given the same date of rank as that given to his running mate in the grade to which promoted.

(c) An officer of the Marine Corps Reserve whose name is on a promotion list established under this chapter is eligible for promotion to the grade for which selected when the officer who is to be his running mate in the higher grade becomes eligible for promotion under [chapter 545] *chapter 36* of this title. When promoted, he shall be given the same date of rank as that given to his running mate in the grade to which promoted.

(d) The promotion of an officer of the Naval Reserve or the Marine Corps Reserve who is under investigation or against whom proceedings of a court-martial or a board of officers are pending may be delayed by the Secretary of the Navy until the investigation or proceedings are completed. However, the promotion of an officer may not be delayed under this subsection for more than one year after the date he is selected for promotion unless the Secretary determines that a further delay is necessary in the public interest.

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§ 5905. Removal from promotion list

(a) The President may remove the name of any reserve officer from a promotion list established under this chapter.

(b) The name of a reserve officer selected under this chapter for promotion to a grade above captain in the Navy or above colonel in the Marine Corps shall be removed from the promotion list if the Senate rejects his appointment to the grade for which he has been recommended.

(c) An officer whose name is removed from a promotion list under subsection (a) or (b) continues to be eligible for consideration for promotion. If he is recommended for promotion by the next selection board, and the report of the board is approved by the President, his name shall be placed on the promotion list without prejudice and, if he is promoted, he shall have the same [lineal rank and] date of rank that he would have had if his name had not been removed. However, if the officer is not recommended for promotion in the approved report of the next selection board, or if he is so recommended but the President removes his name from the promotion list or the Senate rejects his appointment, he is considered for all purposes as having twice failed of selection for promotion.

§5906. Effect of transfer to inactive status list

A reserve officer who is recommended for promotion by a selection board convened under this chapter or under [chapter 543] *chapter 36* of this title, and who, at the time he would otherwise be promoted, is ineligible for promotion because he has been transferred to the inactive status list, shall be treated as if he had not been considered for promotion by the selection board that last considered him. If he is later returned to an active status, his name may not be placed on a promotion list for promotion to the next higher grade until he is considered by another selecton board and is recommended for promotion in the approved report of that board.

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§5910. Promotions under regulations prescribed by Secretary

(a) Notwithstanding any other provision of this chapter, an officer of the Naval Reserve in a grade above ensign may be promoted under regulations prescribed by the Secretary of the Navy whenever any part of the law governing the promotion of his running mate is suspended by the President. An officer of the Naval Reserve in the grade of ensign may be promoted under regulations prescribed by the Secretary whenever ensigns on the [active list] *active-duty list* of the Navy are being promoted with less than three years of service in that grade.

(b) Notwithstanding any other provision of this chapter, an officer of the Marine Corps Reserve in a grade above second lieutenant may be promoted under regulations prescribed by the Secretary whenever any part of the law governing the promotion of his running mate is suspended by the President. An officer of the Marine Corps Reserve in the grade of second lieutenant may be promoted under regulations prescribed by the Secretary whenever second lieutenants on the [active list] *active-duty list* of the Marine Corps are being promoted with less than three years of service in that grade.

(c) Promotions under subsections (a) and (b) may be made in such numbers as the Secretary prescribes.

(d) In the regulations prescribed by him for the promotion of reserve officers under subsections (a) and (b), the Secretary shall provide for equality of opportunity for consideration for promotion among officers of the Naval Reserve and among officers of the Marine Corps Reserve, respectively.

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CHAPTER 551—OFFICERS IN COMMAND

Sec.
5942. Aviation commands: eligibility.
5943. Naval shipyards.
5944. Marine Corps officers: limitation on power to command.
5945. Staff corps officers: limitation on power to command.
5946. Precedence accorded commanding officers.
5947. Requirement of exemplary conduct.

5948. Consular powers: senior officer present afloat.
5949. Policy as to leave and liberty.
5951. Continuation of authority after loss of vessel or aircraft.
5952. Marine Corps organizations on vessels: authority of officers.
[5955. Retired officers withdrawn from command.]

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[§5955. Retired officers withdrawn from command

[Retired officers of the Navy shall be withdrawn from command.]

CHAPTER 553—SPECIAL ASSIGNMENTS AND DETAILS

Sec.

[5982. Ships and squadrons: detail of retired officers to command.]
5983. State Department: assignment of enlisted members as custodians of buildings in foreign countries.
5985. Nautical Schools: detail of naval officers as superintendents or instructors.
5986. Technical institutions: detail of naval officers to promote knowledge of naval engineering and naval architecture.

[§5982. Ships and squadrons: detail of retired officers to command

[(a) In time of war, the President, by and with the advice and consent of the Senate, may detail retired officers of the Navy on active duty to the command of squadrons and single ships, if he believes that the good of the service requires that they be so detailed.

[(b) In making details under subsection (a), the President may select any retired officer not below the grade of commander and assign him to the command of a squadron, with the rank and title of a flag officer.

[(c) If a retired officer detailed under subsection (a) receives, on the recommendation of the President, a vote of thanks of Congress for his services and gallantry in action against the enemy, the President, by and with the advice and consent of the Senate, may appoint him to the active list of the Navy.]

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CHAPTER 555—ADMINISTRATION

Sec.

6011. Navy Regulations.
6012. Additional regulations for Marine Corps.
6013. Enlisted grades and ratings: authority to establish.
6014. Enlisted members: authority for transfer between Marine Corps and Hospital Corps of the Navy.
6015. Women members: duty; qualifications; restrictions.
6017. Retired list for Reserve members entitled to retired pay.
[6018. Naval officers: shore duty; limitations.]
6019. Citizenship of officers of vessels.
6021. Aviation duties: number of personnel assigned.
6022. Aviation training facilities.
6024. Aviation designations: naval flight officer.
6027. Medical Department: composition.
[6028. Medical Service Corps: composition.]
6029. Dental services: responsibilities of senior dental officer.

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§ 6015. Women members: duty; qualifications; restrictions

The Secretary of the Navy may prescribe the manner in which women officers [appointed under section 5590 of this title], women warrant officers, and enlisted women members of the Regular Navy and the Regular Marine Corps shall be trained and qualified for military duty. The Secretary may prescribe the kind of military duty to which such women members may be assigned and the military authority which they may exercise. However, women may not be assigned to duty on vessels or in aircraft that are engaged in combat missions nor may they be assigned to other than temporary duty on vessels of the Navy except hospital ships, transports, and vessels of a similar classification not expected to be assigned combat missions.

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[§ 6018. Naval officers: short duty; limitations

[An officer of the Regular Navy, other than an officer in the Nurse Corps and other than a woman officer appointed under section 5590 of this title, may not be assigned to shore duty, unless—

[(1) the shore duty is specifically provided for by law; or

[(2) the Secretary of the Navy determines that the employment of the officer on shore duty is required by the public interest.]

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§ 6027. Medical Department: composition

[The Medical Corps, the Dental Corps, the Medical Service Corps, the Nurse Corps, and the Hospital Corps are in the Medical Department of the Navy.]

The Medical Corps and Dental Corps, and such other staff corps as the Secretary of the Navy may establish under section 5155(b) of this title and designate to be in the Medical Department of the Navy, are in the Medical Department of the Navy.

[§ 6028. Medical Service Corps: composition

[The following sections, and such other sections as the Secretary of the Navy considers necessary, are in the Medical Service Corps:

[(1) Pharmacy, Supply, and Administration Section.

[(2) Medical Allied Sciences Section.

[(3) Optometry Section.]

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CHAPTER 559—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
[6111. Pay: withheld during absence due to use of alcohol or drugs.]
[6113. Loans: Supply Corps officers.

CHAPTER 561—MISCELLANEOUS RIGHTS AND BENEFITS

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Sec.
[6141. Pay: officers, date of commencement.
[6142. Pay: assignments.

[6143. Pay: sale to be discouraged by commanding officer.
[6144. Pay accounts: settlement when lost with vessel.
[6145. Pay accounts: settlement; fixing date of loss of vessel.
[6146. Allotments: officers.
[6147. Allowances: prisoners.
[6148. Disability and death benefits: Naval Reserve and Marine Corps Reserve.]
6151. Higher retired grade and pay for members who serve satisfactorily under temporary appointments.

§ 6151. Higher retired grade and pay for members who serve satisfactorily under temporary appointments

(a) Unless otherwise entitled to a higher retired grade *and subject to sections 688 and 1370 of this title*, each member, other than a retired member, of the Navy or the Marine Corps shall, when retired, be advanced on the retired list to the highest officer grade in which he served satisfactorily under a temporary appointment as determined by the Secretary of the Navy.

(b)(1) Each member, other than a former member of the Fleet Reserve or the Fleet Marine Corps Reserve, who is advanced on the retired list under this section is, unless otherwise entitled to higher retired pay, entitled to retired pay—

(A) in the case of a member who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before [the date of the enactment of the Department of Defense Authorization Act, 1981] *September 8, 1980*, at the rate of 2½ percent of the basic pay of the grade to which advanced; or

(B) in the case of a member who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after [the date of the enactment of the Department of Defense Authorization Act, 1981] *September 8, 1980*, at the rate of 2½ percent of the monthly retired pay base computed under section 1407(d) of this title;

multiplied by the number of years of service that may be credited to him under section 1405 of this title, but the retired pay may not be more than 75 percent of the basic pay or monthly retired pay base upon which the computation of retired pay is based.

(2) In determining the number of years to be used as a multiplier under this subsection, a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded.

(c)(1) Each former member of the Fleet Reserve or the Fleet Marine Corps Reserve who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before [the date of the enactment of the Department of Defense Authorization Act, 1981] *September 8, 1980*, who is advanced on the retired list under this section is entitled to retired pay based upon the grade to which advanced. Such retired pay shall be at the rate of 2½ percent of the basic pay of the grade to which advanced, determined by the same period of service used to determine the basic pay of the grade upon which his retainer pay is based, multiplied by the number of years of service creditable for his retainer pay at the time of retirement, but the retired pay may not be more than 75 percent of the basic pay upon which the computation of retired pay is based.

(2) Each former member of the Fleet Reserve or the Fleet Marine Corps Reserve who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after [the date of the enactment of the Department of Defense Authorization Act, 1981,] *September 8, 1980*, who is advanced on the retired list under this section is entitled to retired pay at the rate of 2½ percent of the monthly retired pay base computed under section 1407(d) of this title, multiplied by the number of years of service creditable for his retainer pay at the time of retirement, but the retired pay may not be more than 75 percent of the monthly retired pay base upon which the computation of retired pay is based.

(d) A member who is advanced on the retired list under this section from the grade of warrant officer, W-1, or from an enlisted grade to a commissioned grade, and who applies to the Secretary within three months after his advancement, shall, if the Secretary approves, be restored on the retired list to his former warrant officer or enlisted grade, as the case may be. A member who is restored to his former grade under this subsection is thereafter considered for all purposes as a warrant officer, W-1, or an enlisted member, as the case may be.

CHAPTER 563—HOSPITALIZATION AND MEDICAL CARE

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§ 6201. Members of the naval service in other United States hospitals

(a) * * *

(b) The deduction authorized by [section 16 of title 24] *section 4812 of the Revised Statutes (24 U.S.C. 16)* shall be made from accounts of members hospitalized under this section.

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CHAPTER 565—BANDS

Sec.

6221. United States Navy Band[; leader's pay and allowances].
6222. United States Marine Band: composition; director; assistant director.
6223. Competition with civilian musicians prohibited.
[6224. United States Navy Band: United States Marine Corps Band: concert tours].

§ 6221. United States Navy Band[; leader's pay and allowances]

[(a)] There is a Navy band known as the United States Navy Band.

§ 6222. United States Marine Band: composition; director; assistant director

(a) The band of the Marine Corps shall be composed of one director, two assistant directors, and other personnel in such numbers and grades as the Secretary of the Navy determines to be necessary.

(b) The Secretary shall designate the director and assistant directors of the Marine Band from among qualified members of the Marine Corps. Upon the recommendation of the Secretary, a member so designated may be appointed by the President, by and with the advice and consent of the Senate, to a commissioned grade in the Regular Marine Corps.

(c) The initial appointment to a commissioned grade of a member designated as director of the Marine Band shall be in the grade of captain, except that a member who, at the time of his designation, holds an appointment in a higher grade may be appointed in that higher grade, but not above lieutenant colonel. The initial appointment of a member designated as assistant director shall be in a grade below captain.

(d) The Secretary shall prescribe regulations for the promotion of members designated as director or assistant director of the Marine Band, and the President, by and with the advice and consent of the Senate, may from time to time appoint them to higher grades.

[(f)**]** *(e)* Unless otherwise entitled to higher retired grade and retired pay, a member who holds, or has held, an appointment under this section is entitled, when retired, to be retired in, and with retired pay based on, the highest grade held under this section in which the Secretary determines that he served satisfactorily.

[(g)**]** *(f)* The Secretary may revoke any designation as director or assistant director of the Marine Band. When a member's designation is revoked, his appointment to commissioned grade under this section terminates and he is entitled, at his option—

(1) to be discharged from the Marine Corps; or

(2) to revert to the grade and status he held at the time of his designation as director or assistant director.

CHAPTER 569—DISCHARGE OF ENLISTED MEMBERS

Sec.
6292. Minors enlisted upon false statement of age.
[6294. Women in the Regular Navy and Regular Marine Corps; termination of enlistment.**]**

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[§ 6294. Women in the Regular Navy and Regular Marine Corps; termination of enlistment

[The Secretary of the Navy, under regulations prescribed by him, may terminate the elistment of and discharge any enlisted woman in the Regular Navy of the Regular Marine Corps.**]**

CHAPTER 571—VOLUNTARY RETIREMENT

Sec.
6321. Officers: 40 years.
6322. Officers: 30 years.
6323. Officers: 20 years.
6324. Officers: creditable service.
6325. Officers: retired grade and pay.
6326. Enlisted members: 30 years.
6327. Officers and enlisted members of the Naval Reserve and Marine Corps Reserve: 30 years; 20 years; retired pay.
6328. Treatment of fractions of years of service in computing retired pay.
6329. Officers not to be retired for misconduct.
6330. Enlisted members: transfer to Fleet Reserve and Fleet Marine Corps Reserve; retainer pay.

6331. Members of the Fleet Reserve and Fleet Marine Corps Reserve: transfer to the retired list; retired pay.
6332. Conclusiveness of transfers.

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§ 6322. Officers: 30 years

(a) An officer of the Regular Navy or the Regular Marine Corps holding a permanent appointment in the grade of warrant officer, W-1, or above who applies for retirement after completing 30 or more years of active service may in the discretion of the Secretary of the Navy, be retired.

(b) For the purpose of this section, an officer's years of active service are computed by adding all his active service in the armed forces.

(c) Each officer who is retired under this section is entitled to retired pay—

(1) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before **[**the date of the enactment of the Department of Defense Authorization Act, 1981**]** *September 8, 1980,* at the rate of 75 percent of the highest basic pay of the grade in which retired; or

(2) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after **[**the date of the enactment of the Department of Defense Authorization Act, 1981**]** *September 8, 1980,* at the rate of 75 percent of the monthly retired pay base computed under section 1407(d) of this title.

§ 6323. Officers: 20 years

(a) An officer of the Navy or the Marine Corps who applies for retirement after completing more than 20 years of active service, of which at least 10 years was service as a commissioned officer, may, in the discretion of the President, be retired on the first day of any month designated by the President.

(b) For the purposes of this section—

(1) an officer's years of active service are computed by adding all his active service in the armed forces; and

(2) his years of service as a commissioned officer are computed by adding all his active service in the armed forces under permanent or temporary appointments in grades above warrant officer, W-1.

[(c) Unless otherwise entitled to a higher grade, each officer retired under this section shall be retired—

[(1) in the highest grade, permanent or temporary, in which he served satisfactorily on active duty as determined by the Secretary of the Navy; or

[(2) if the Secretary determines that he did not serve satisfactorily in his highest temporary grade, in the next lower grade in which he has served, but not lower than his permanent grade.**]**

(c) The retired grade of an officer retired under this section is the grade determined under section 1370 of this title.

(d) A warrant officer who retires under this section may elect to be placed on the retired list in the highest grade and with the highest retired pay to which he is entitled under any provision of this title. If the pay of that highest grade is less than the pay of any warrant grade satisfactorily held by him on active duty, his retired pay shall be based on the higher pay.

(e) Unless otherwise entitled to higher pay, an officer retired under this section is entitled to retired pay—

(1) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before [the date of the enactment of the Department of Defense Authorization Act, 1981] *September 8, 1980*, at the rate of 2½ percent of the basic pay of the grade in which retired; or

(2) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after [the date of the enaactment of the Department of Defense Authorization Act, 1981] *September 8, 1980*, at the rate of 2½ percent of the monthly retired pay base computed under section 1407(d) of this title;

multiplied by the number of years of service that may be credited to him under section 1405 of this title, but the retired pay so computed may not be more than 75 percent of the basic pay or monthly retired pay base upon which the computation of retired pay is based.

(f) Officers of the Naval Reserve and the Marine Corps Reserve who were transferred to the Retired Reserve from an honorary retired list under section 213(b) of the Armed Forces Reserve Act of 1952 (66 Stat. 485), or are transferred to the Retired Reserve under section 6327 of this title, may be retired under this section, notwithstanding their retired status, if they are otherwise eligible.

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§ 6325. Officers: retired grade and pay

(a) Except as provided in subsection (b), *or section 1370 of this title*, each officer who is retired under section 6321 or 6322 of this title—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade in which he was serving at the time of retirement; and

(2) unless otherwise entitled to higher pay, is entitled to retired pay—

(A) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before [the date of the enactment of the Department of Defense Authorization Act, 1981] *September 8, 1980*, at the rate of 2½ percent of the basic pay of the grade in which he retired; or

(B) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after [the date of the enactment of the Department of Defense Authorization Act, 1981] *September 8, 1980*, at the rate of 2½ percent of the monthly retired pay base computed under section 1407(d) of this title;

multiplied by the number of years of service that may be credited to him under section 1405 of this title, but the retired pay so computed may not be more than 75 percent of the basic pay or monthly retired pay base upon which the computation of retired pay is based.

(b) Each officer who is retired while serving in the grade of admiral, vice admiral, general or lieutenant general by virtue of an appointment under section [5231 or 5232] *601* of this title or who is retired while serving in a grade to which he was appointed under section 5597 of this title or promoted under section 5787 or 5787d of this title—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade he would hold if he had not received such an appointment; and

(2) unless otherwise entitled to higher pay, is entitled to retired pay—

(A) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before [the date of the enactment of the Department of Defense Authorization Act, 1981] *September 8 1980,* at the rate of 2½ percent of the basic pay of the grade he would hold if he had not received such an appointment; or

(B) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after [the date of the enactment of the Department of Defense Authorization Act, 1981] *September 8, 1980,* at the rate of 2½ percent of the monthly retired pay base computed under section 1407(d) of this title;

multipled by the number of years of service that may be credited to him under section 1405 of this title, but the retired pay so computed may not be more than 75 percent of the basic pay or monthly retired pay base upon which the computation of retired pay is based.

(c) A warrant officer who retires under section 6321, 6322, or 6323 of this title may elect to be placed on the retired list in the highest grade and with the highest retired pay to which he is entitled under any provision of this title. If the pay of that highest grade is less than the pay of any warrant grade satisfactorily held by him on active duty, his retired pay shall be based on the higher pay.

§ 6326. Enlisted members: 30 years

(a) Each enlisted member of the Regular Navy or the Regular Marine Corps who applies for retirement after completing 30 or more years of active service in the armed forces shall be retired by the President.

(b) For the purpose of subsection (a), "enlisted member" includes a member of the Regular Navy or the Regular Marine Corps who holds a permanent enlisted grade and a temporary appointment in a commissioned or warrant officer grade.

(c) Each person retired under this section–

(1) unless otherwise entitled to a higher grade, shall be retired in the grade in which serving at the time of retirement; and

(2) unless otherwise entitled to higher pay, is entitled to retired pay—

(A) in the case of a person who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before [the date of the enactment of the Department of Defense Authorization Act, 1981] *September 8, 1980*, at the rate of 75 percent of the basic pay of the pay grade in which he was serving on the day before retirement or, if he has served as [senior enlisted advisor] *Master Chief Petty Officer* of the Navy or as sergeant major of the Marine Corps, 75 percent of the highest basic pay to which he was entitled while so serving, if that rate is higher; or

(B) in the case of a person who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after [the date of the enactment of the Department of Defense Authorization Act, 1981] *September 8, 1980*, computed by multiplying the monthly retired pay base computed under section 1407(d) of this title by 75 percent.

* * * * * * *

§6330. Enlisted members: transfer to Fleet Reserve and Fleet Marine Corps Reserve; retainer pay

(a) The Fleet Reserve and the Fleet Marine Corps Reserve are composed of members of the naval service transferred thereto under—

(1) title II of the Naval Reserve Act of 1938 (52 Stat. 1178), as amended; or

(2) this section.

(b) An enlisted member of the Regular Navy or the Naval Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Reserve. An enlisted member of the Regular Marine Corps or the Marine Coprs Reserve who has completed 20 or more years of active service in the armed forces may, at his request be transferred to the Fleet Marine Corps Reserve.

(c)(1) Each member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section is entitled, when not on active duty, to retainer pay—

(A) in the case of a member who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before [the date of the enactment of the Department of Defense Authorization Act, 1981] *September 8, 1980*, at the rate of 2½ percent of the basic pay that he received at the time of transfer or, in the case of a member who has served as [senior enlisted advisor] *Master Chief Petty Officer* of the Navy or sergeant major of the Marine Corps, of the highest basic pay to which he was entitled while so serving, if that basic pay is higher than the basic pay received at the time of transfer; or

(B) in the case of a member who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after [the date of the enactment of the Department of Defense Authorization Act, 1981] *September 8, 1980*, at the rate of 2½ percent of the monthly retainer pay base computed under section 1407(d) of this title;

multiplied by the number of years of active service in the armed forces.

(2) A member may recompute his retainer pay under section 1402 or 1402a of this title, as appropriate, to reflect active duty after transfer.

(3) If the member has been credited by the Secretary of the Navy with extraordinary heroism in the line of duty, which determination by the Secretary is final and conclusive for all purposes, his retainer pay shall be increased by 10 percent.

(4) In no case may a member's retainer pay be more than 75 percent of the basic pay or monthly retainer pay base upon which the computation of retainer pay is based.

(d) For the purposes of subsections (b) and (c), a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded. A completed minority enlistment is counted as four years of active service, and an enlistment terminated within three months before the end of the term of enlistment is counted as active service for the full term.

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CHAPTER 573—INVOLUNTARY RETIREMENT, SEPARATION, AND FURLOUGH

Sec.
[6371. Regular Navy; line rear admirals not restricted in performance of duty: continuation on active list; retirement.
[6372. Regular Navy; line rear admirals restricted in performance of duty and staff corps rear admirals: retention on active list; retirement.
[6373. Regular Marine Corps; major generals: retention on active list; retirement.
[6374. Regular Marine Corps; brigadier generals: retirement for failures of selection for promotion.
[6376. Regular Navy, line captains not restricted in performance of duty; Regular Marine Corps, colonels: retirement for length of service.
[6377. Regular Navy, line captains restricted in performance of duty, staff corps captains, and Nurse Corps commanders: retirement for length of service.
[6378. Regular Navy, line captains restricted in performance of duty, staff corps captains, and Nurse Corps commanders: continuation on active list; retirement.
[6379. Regular Navy, commanders; Regular Marine Corps, lieutenant colonels: retirement for length of service and failures of selection for promotion.
[6380. Regular Navy, lieutenant commanders; Regular Marine Corps, majors: retirement for length of service and failures of selection for promotion.
[6381. Officers retired under preceding sections: retired grade and pay; general rule.
[6382. Regular Navy, lieutenants and lieutenants (junior grade); Regular Marine Corps, captains and first lieutenants: discharge for failures of selection for promotion; severance pay.
6383. Regular Navy and Regular Marine Corps; officers designated for limited duty: retirement for length of service or failures of selection for promotion; discharge for failures of selection for promotion; reversion to prior status; retired grade; retired [or severance] pay.
[6384. Regular Navy and Regular Marine Corps; officers having less than 20 years of service: discharge for unsatisfactory performance of duty; severance pay; reversion of limited duty officers to prior status.
[6385. Officers appointed under sections 5231, 5232, 5787, or 5787d of this title: grade for purpose of preceding sections.
[6386. Suspension: preceding sections.
[6387. Regular Navy, male line officers; Regular Marine Corps, male officers: computation of total commissioned service.
[6388. Regular Navy; certain staff corps officers: computation of total commissioned service.]
6389. Naval Reserve and Marine Corps Reserve; officers: elimination from active status; computation of total commissioned service.
[6390. Regular Navy and Regular Marine Corps; officers: retirement at age 62.]

6391. Naval Reserve and Marine Corps Reserve; officers: retirement at age 62.
[6392. Regular Navy and Regular Marine Corps; officers having less than three years of service: revocation of appointments; reversion of certain officers to prior status.
[6393. Regular Navy and Regular Marine Corps; women officers: termination of appointments.
[6394. Regular Navy, rear admirals and commodores; Regular Marine Corps, major generals and brigadier generals: retirement on recommendation of board.
[6395. Regular Navy and Regular Marine Corps; officers having less than 20 years of service: discharge during war or emergency for unsatisfactory performance of duty.
[6396. Regular Navy; officers in Nurse Corps in grades below commander: retirement or discharge.]
6397. Naval Reserves; officers in the Nurse Corps: elimination from active status.
[6398. Regular Navy; women captains and commanders; Regular Marine Corps; women colonels and lieutenant colonels: retirement for length of service; retired grade and pay.
[6400. Regular Navy, women lieutenant commanders; Regular Marine Corps, women majors: retirement for length of service: retirement grade and pay.
[6401. Regular Navy, women lieutenants; Regular Marine Corps, women captains: discharge for length of service; severance pay.
[6402. Regular Navy, women lieutenants (junior grade); Regular Marine Corps, women first lieutenants; discharge for length of service: severance pay.]
6403. Naval Reserve and Marine Corps Reserve; women officers: elimination from active status.
[6404. Treatment of fractions of years of service in computing retired pay and severance pay.]
6404. Treatment of fractions of years of service in computing retired pay and separation pay.
[6407. Communication with selection board.]
6408. Navy and Marine Corps; warrant officers, W-1: limitation on dismissal.
[6410. Naval Reserve and Marine Corps Reserve; officers: elimination from active status to provide a flow of promotion.

[§6371. Regular Navy; line rear admirals not restricted in performance of duty: continuation on active list; retirement

[(a) Each officer not restricted in the performance of duty serving in the grade of rear admiral on the active list in the line of the Navy is eligible for consideration for continuation on the active list by a selection board convened in the fiscal year in which he first completes—

[(1) at least five years of service in the grade of rear admiral; and

[(2) at least 35 years of total commissioned service as computed under section 6387 of this title.

However, an officer who will become 62 years of age in the fiscal year in which he would otherwise be eligible for consideration for continuation on the active list under this section is not eligible for such consideration.

[(b) The Secretary of the Navy shall determine, as of the date of the convening of the appropriate selection board, the number of officers not restricted in the performance of duty serving in the grade of rear admiral on the active list in the line of the Navy that the board may recommend for continuation on the active list. The number may not be less than 50 percent or more than 75 percent of the number of officers who are eligible for consideration for continuation under this section. In determining the number that the board may recommend, the Secretary shall consider the number of existing vacancies for rear admirals in the line of the Navy not restricted in the performance of duty and the number of vacancies that he estimates must occur during each of the next five years in order that captains will be best assured of a flow of promotion to the grade of rear admiral and that rear admirals who will become eligible for consideration in succeeding years will be best assured of equality of opportunity for continuation on the active list.

[(c) An officer who is recommended for continuation on the active list in the approved report of a selection board under this section may not be retired under this section.

[(d) Each officer who is considered by a selection board for continuation on the active list under this section, and who is not recommended for continuation in the approved report of the board, shall, unless retired under another provision of law, be retired on June 30 of the current fiscal year.

[(e) For the purpose of this section, an officer is credited with service in the grade of rear admiral from the date of his eligibility for promotion to that grade.

[§ 6372. Regular Navy; line rear admirals restricted in performance of duty and staff corps rear admirals: retention on active list; retirement

[(a) Except as provided in subsection (b), each officer restricted in the performance of duty serving in the grade of rear admiral on the active list in the line of the Navy, and each officer serving in the grade of rear admiral on the active list of the Navy in any staff corps, shall be retired on June 30 of the fiscal year in which he first completes—

[(1) at least seven years of service in the grade of rear admiral; and

[(2) at least 35 years of total commission service as computed under section 6387 or 6388 of this title.

[(b) Each officer who would otherwise be retired under this section shall be retained on the active list if recommended for retention in the approved report of a board convened under section 5709 of this title. An officer so retained, if not retired under another provision of law, shall continue on the active list until June 30 of any succeeding fiscal year in which—

[(1) he is not again recommended for retention in the approved report of such a board; or

[(2) no such board is convened.

[(c) The number of officers that may be recommended by a board for retention on the active list under this section may not exceed the number that the Secretary of the Navy determines is required to meet the needs of the service.

[(d) For the purpose of this section, an officer's service in the grade of rear admiral is computed from the date of the occurrence of the vacancy that he was promoted to fill. However, service in grade of an officer promoted to the grade of rear admiral before August 7, 1947, and for any officer whose lineal position was adjusted in the grade of rear admiral or who was assigned a new running mate in that grade is computed from this date of rank in the grade of rear admiral.

[§ 6373. Regular Marine Corps; major generals: retention on active list; retirement

[(a) Except as provided in subsection (b) and (c), each officer serving in the grade of major general of the active list of the Marine Corps shall be retired on June 30 of the fiscal year in which he first completes—

[(1) at least five years of service in the grade of major general; and

[(2) at least 35 years of total commissioned service as computed under section 6387 of this title.

[(b) An officer is not subject to retirement under this section while serving as Commandant of the Marine Corps.

[(c) Each officer who would otherwise be retired under this section shall be retained on the active list if recommended for retention in the approved report of a board convened under section 5709 of this title. An officer so retained, if not retired under another provision of law, shall continue on the active list under June 30 of any succeeding fiscal year in which—

[(1) he is not again recommended for retention in the approval report of such a board; or

[(2) no such board is convened.

[(d) The number of officers that may be recommended by a board for retention on the active list under this section may not exceed the number that the Secretary of the Navy determines to be necessary to meet the requirements of the Marine Corps. In any year in which the number of officers subject to retirement under this section is three or more, the Secretary shall fix the maximum number that may be recommended for retention at not less than the number of officers subject to such retirement minus two.

[(e) For the purpose of this section, an officer's service in the grade of major general is computed from the date of the occurrence of the vacancy that he was promoted to fill. However, service in grade of an officer promoted to the grade of major general before August 7, 1947, is computed from the date of his appointment in that grade.

[§ 6374. Regular Marine Corps; brigadier generals: retirement for failures of selection for promotion

[Each officer serving in the grade of brigadier general on the active list of the Marine Corps whose name is not on a promotion list shall be retired on June 30 of the fiscal year in which he is considered as having failed of selection for promotion to the grade of major general for the second time.

[§ 6376. Regular Navy, line captains not restricted in performance of duty; Regular Marine Corps, colonels: retirement for length of service

[(a) Each officer not restricted in the performance of duty serving in the grade of captain on the active list in the line of the Navy and each officer serving in the grade of colonel on the active list of the Marine Corps shall, subject to section 5777 of this title, be retired on June 30 of the fiscal year in which he completes—

[(1) 30 years of total commissioned service as computed under section 6387 of this title, if he is not on a promotion list and is considered as having twice failed of selection for promotion to the grade of rear admiral or brigadier general; or

[(2) 31 years of total commissioned service as computed under section 6387 of this title, if he is not on a promotion list.

However, an officer who has lost numbers or precedence may not be retired because of completing 31 years of total commissioned service until June 30 of the fiscal year in which he completes five years of service in the grade of captain in the Navy or colonel in the Marine Corps. For the purpose of this section, an officer promoted to the grade of captain in the Navy or colonel in the Marine Corps after August 6, 1947, is credited with service in that grade from the date of his eligibility for promotion to the grade of captain or colonel.

[(b) This section does not apply to women officers appointed under section 5590 of this title.

[§ 6377. Regular Navy, line captains restricted in performance of duty, staff corps captains, and Nurse Corps commanders: retirement for length of service

[(a) If not on a promotion list and if not continued on the active list under section 6378 of this title, each officer restricted in the performance of duty serving in the grade of captain on the active list in the line of the Navy shall, subject to section 5777 of this title, be retired on June 30 of the fiscal year in which he completes 31 years of total commissioned service as computed under section 6387 of this title.

[(b) If not on a promotion list and if not continued on the active list under section 6378 of this title, each officer serving in the grade of captain on the active list of the Navy in any staff corps shall, subject to section 5777 of this title, be retired on June 30 of the fiscal year in which he completes—

[(1) 30 years of total commissioned service as computed under section 6388 of this title and is considered as having twice failed of selection for promotion to the grade of rear admiral; or

[(2) 31 years of total commissioned service as computed under section 6388 of this title.

[(d) If not on a promotion list and if not continued on the active list under section 6378 of this title, each officer serving in the grade of commander on the active list of the Navy in the Nurse Corps shall be retired on June 30 of the fiscal year in which the officer is considered as having twice failed of selection for promotion to the grade of captain and has completed at least twenty-six years of active commissioned service as computed under section 6388 of this title.

[(e) Notwithstanding subsections (a) and (b), an officer who has lost numbers or precedence may not be retired because of completing 31 years of total commissioned service until June 30 of the fiscal year in which he completes five years of service in the grade of captain in the Navy. For the purpose of this section, an officer promoted to the grade of captain in the Navy after August 6, 1947, is credited with service in that grade from the date of his eligibility for promotion to the grade of captain.

[§ 6378. Regular Navy, line captains restricted in performance of duty, staff corps captains, and Nurse Corps commanders: continuation on active list; retirement

[(a) Each officer restricted in the performance of duty serving in the grade of captain on the active list in the line of the Navy, each officer serving in the grade of captain on the active list of the Navy in any staff corps, and each officer serving in the grade of commander on the active list of the Navy in the Nurse Corps is eligible for consideration for continuation on the active list by an appropriate selection board convened under section 5701, 5702, or 5703 of this title in the fiscal year in which he would be subject to retirement under section 6377 of this title and in each fiscal year thereafter while on the active list and not on a promotion list. However, any such captain or commander who will complete 35 years of total commissioned service as computed under section 6387 or 6388 of this title or who will become 62 years of age in the fiscal year in which the selection board is convened is ineligible for consideration for continuation on the active list.

[(b) Not more than the following numbers of officers recommended for continuation on the active list may be so continued until the report of the next succeeding selection board is approved;

[(1) 10 captains designated for engineering duty.
[(2) 5 captains designated for aeronautical engineering duty.
[(3) 10 captains designated for special duty.
[(4) 22 captains in the Supply Corps.
[(5) 25 captains in the Chaplain Corps.
[(6) 7 captains in the Civil Engineer Corps.
[(7) The number of captains in the Medical Corps, the Judge Advocate General's Corps, the Dental Corps, the Medical Service Corps and the Nurse Corps, and the number of commanders in the Nurse Corps, that the Secretary of the Navy determines to be necessary to meet the needs of the service.

[(c) If an officer continued on the active list under this section is not again recommended for continuation in the approved report of the next succeeding selection board, he shall be carried in excess of the number authorized to be so continued until June 30 of the then current fiscal year and shall be placed on the retired list on that date.

[§ 6379. Regular Navy, commanders; Regular Marine Corps, lieutenant colonels: retirement for length of service and failures of selection for promotion

[(a) Each officer on the active list of the Navy or the Marine Corps serving in the grade of commander or lieutenant colonel, except an officer designated for limited duty, shall, subject to the provisions of section 5777 of this title, be retired on June 30, of the fiscal year in which—

[(1) he is not on a promotion list;
[(2) he is considered as having twice failed of selection for promotion to the grade of captain in the Navy or colonel in the Marine Corps; and
[(3) he has completed at least 26 years of total commissioned service as computed under section 6387 or 6388 of this title.

[(b) This section does not apply to women officers appointed under section 5590 of this title or officers in the Nurse Corps.

[§ 6380. Regular Navy, lieutenant commanders; Regular Marine Corps, majors: retirement for length of service and failures of selection for promotion

[(a) Each officer on the active list of the Navy or the Marine Corps serving in the grade of lieutenant commander or major shall, subject to section 5777 of this title, be retired on June 30 of the fiscal year in which—

[(1) he is not on a promotion list;

[(2) he is considered as having twice failed of selection for promotion to the grade of commander or lieutenant colonel; and

[(3) he has completed at least 20 years of total commissioned service as computed under section 6387 or 6388 of this title.

[(b) This section does not apply to women officers appointed under section 5590 of this title, to officers designated for limited duty, or to officers in the Nurse Corps.

[§ 6381. Officers retired under preceding sections: retired grade and pay; general rule

[(a) Each officer retired under the preceding sections of this chapter—

[(1) unless otherwise entitled to a higher grade, shall be retired in the grade in which he was serving at the time of retirement; and

[(2) is entitled to retired pay—

[(A) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Department of Defense Authorization Act, 1981, at the rate of 2½ percent of the basic pay of the grade in which she retired; or

[(B) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after the date of the enactment of the Department of Defense Authorization Act, 1981, at the rate of 2½ percent of the monthly retired pay base computed under section 1407(d) of this title;

multiplied by the number of years of service that may be credited to him under section 1405 of this title, but the retired pay may not be more than 75 percent of the basic pay or monthly retired pay base upon which the computation of retired pay is based.

[(b) The retired pay under this section of an officer commissioned in the Regular Navy or the Regular Marine Corps under the Act of April 18, 1946, ch. 141 (60 Stat. 92), or commissioned in the Regular Navy or the Regular Marine Corps after September 8, 1939, while serving on active duty as an officer in the Naval Reserve or the Marine Corps Reserve, may not be less than 50 percent of the basic pay or monthly retired pay base, as the case may be, upon which the computation of retired pay is based.

[(c) The retired pay under this section of an officer in the Nurse Corps may not be less than 50 percent of the basic pay or monthly retired pay base, as the case may be, upon which the computation of retired pay is based.

[§ 6382. Regular Navy, lieutenants and lieutenants (junior grade); Regular Marine Corps, captains and first lieutenants: discharge for failures of selection for promotion; severance pay

[(a) Each officer on the active list of the Navy serving in the grade of lieutenant, except an officer in the Nurse Corps, and each officer on the active list of the Marine Corps serving in the grade of captain shall be honorably discharged on June 30 of the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time. However, if he so requests, he may be honorably discharged at any time during that fiscal year.

[(b) Each officer on the active list of the Navy serving in the grade of lieutenant (junior grade), except an officer of the Nurse Corps, and each officer on the active list of the Marine Corps serving in the grade of first lieutenant shall be honorably discharged on June 30 of the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant or captain for the second time. However, if he so requests, he may be honorably discharged at any time during that fiscal year.

[(c) Each officer discharged under this section is entitled to a lump-sum payment equal to two months' basic pay at the time of discharge multiplied by the number of years of total commissioned service as computed under section 6387 or 6388 of this title, but the payment may not be more than two years' basic pay. The acceptance of a lump-sum payment under this section does not deprive a person of any retirement benefits from the United States. However, there shall be deducted from each of his retirement payments so much thereof as is based on the service for which he has received payment under this section until the total deducted equals the amount of lump-sum payment. However, no person is entitled to a lump-sum payment under this section that is more than $15,000.

[(d) This section does not apply to women officers appointed under section 5590 of this title or to officers designated for limited duty.]

§ 6383. Regular Navy and Regular Marine Corps; officers designated for limited duty; retirement for length of service or failures of selection for promotion; discharge for failures of selection for promotion; reversion to prior status; retired grade; retired [or severance] pay

(a) [Each officer designated for limited duty on the active list of the Navy or the Marine Corps] *Except as provided in subsection (i), each regular officer of the Navy or Marine Corps designated for limited duty* shall be retired on the last day of the month following the month in which he completes 30 years of active naval service, exclusive of ative duty for training in a reserve component.

[(b) Each officer designated for limited duty on the active list of the Navy serving in the grade of lieutenant commander and each officer designated for limited duty on the active list of the Marine Corps serving in the grade of major shall be retired on June 30 of the fiscal year in which he is considered as having failed of selection for promotion to the grade of commander or lieutenant colonel for the second time.]

(b) Except as provided in subsection (i), each regular officer on the active-duty list of the Navy serving in the grade of lieutenant commander who is an officer designated for limited duty, and each regular officer on the active-duty list of the Marine Corps serving in the grade of major who is an officer designated for limited duty, who is considered as having failed of selection for promotion to the grade of commander or lieutenant colonel, respectively, for the second time and whose name is not on a promotion list shall be retired, if eligible to retire, or be discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed of selection for promotion to the grade of commander or lieutenant colonel for the second time.

(c) Each officer retired under subsection (a) or (b)—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade **[**in which he was serving at the time of retirement**]** *determined under section 1370 of this title;* and

(2) is entitled to retired pay—

(A) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before **[**the date of the enactment of the Department of Defense Authorization Act, 1981**]** *September 8, 1980,* at the rate of 2½ percent of the basic pay to which he would be entitled if serving on active duty in the grade in which he retired; or

(B) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after **[**the date of the enactment of the Department of Defense Authorization Act, 1981**]** *September 8, 1980,* at the rate of 2½ percent of the monthly retired pay base computed under section 1407(d) of this title;

multiplied by the number of years of service that may be credited to him under section 1405 of this title, but the retired pay may not be more than 75 percent of the basic pay or monthly retired pay base upon which the computation of retired pay is based.

[(d) Each officer designated for limited duty on the active list of the Navy serving in the grade of lieutenant and each officer designated for limited duty on the active list of the Marine Corps serving in the grade of captain shall be honorably discharged on June 30 of the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time. However, if he so requests, he may be honorably discharged at any time during that fiscal year.

[(e) Each officer designated for limited duty on the active list of the Navy serving in the grade of lieutenant (junior grade) and each officer designated for limited duty on the active list of the Marine Corps serving in the grade of first lieutenant shall be honorably discharged on June 30 of the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant or captain for the second time. However, if he so requests, he may be honorably discharged at any time during that fiscal year.**]**

(d) Each regular officer on the active-duty list of the Navy serving in the grade of lieutenant who is an officer designated for limited duty, and each regular officer on the active duty list of the Marine Corps serving in the grade of captain who is an officer designated for limited duty, who is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time and whose name is not on a list of officers recommended for promotion shall be honorably discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time.

(e)(1) Each regular officer on the active-duty list of the Navy serving in the grade of lieutenant (junior grade) who is an officer designated for limited duty, and each regular officer on the active-duty list of the Marine Corps serving in the grade of first lieutenant who is an officer designated for limited duty, who is considered as having failed of selection for promotion to the grade of lieutenant (in the case of an officer of the Navy) or captain (in the case of an officer of the Marine Corps) for the second time shall be honorably discharged on the date requested by the officer and approved by the Seretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed of selection for promotion to the grade of lieutenant or capotain, respectively, for the second time.

(2) Each regular officer on the active-duty list of the Navy serving in the grade of ensign who is an officer designated for limited duty, and each regular officer on the active-duty list of the Marine Corps serving in the grade of second lieutenant who is an officer designated for limited duty, who is found not qualified for promotion to the grade of lieutenant (junior grade) (in the case of an officer of the Navy) or first lieutenant (in the case od an officer of the Marine Corps) shall be honorably discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the officer was found not qualified for promotion.

[(f) Each officer honorably discharged under subsection (d) or (e) is entitled to a lump-sum payment computed on the basis of two months' basic pay received at the time of discharge multiplied by the number of years of total commissioned service as computed under section 6387 or 6388 of this title, but the payment may not be more than two years' basic pay. The acceptance of a lump-sum payment under this section does not deprive a person of any retirement benefits from the United States. However, there shall be deducted from each of his retirement payments so much thereof as is based on the service for which he has received payment under this section, until the total deductions equal the amount of the lump-sum payment. However, no person is entitled to a lump-sum payment under this section that is more than $15,000.**]**

[(g)**]** *(f)* If any officer subject to **[**retirement or discharge under subsections (b), (d),**]** *discharge under subsection (d)* or (e) had the permanent status of a warrant officer when first appointed as an officer designated for limited duty, he has the option, instead of being **[**retired or**]** discharged, of reverting to the grade and status he would hold if he had not been so appointed. If any such officer had a permanent grade below the grade of warrant officer, W-1, when first so appointed, he has the option, instead of being **[**retired or**]** discharged, of reverting to the grade and status he would hold if he had not been so appointed but had instead been appointed a warrant officer, W-1.

[(h)**]** *(g)* In any computation to determine the grade and status to which an officer may revert under this section, all active service as an officer designated for limited duty or as a temporary or reserve officer is included.

(h) An officer discharged under this section is entitled, if eligible therefor, to separation pay under section 1174(a) of this title.

(i) Under such regulations as he may prescribe, whenever the needs of the service require, the Secretary of the Navy may defer the retirement under subsection (a) or (b) of any officer designated for limited duty upon recommendation of a board of officers convened under section 611(b) of this title and with the consent of the officer concerned. An officer whose retirement is deferred under this subsection and who is not subsequently promoted may not be continued on active duty beyond 24 years active commissioned service, if in the grade of lieutenant commander or major or 28 years active commissioned service, if in the grade of commander or lieutenant colonel, or beyond age 62, whichever is earlier.

(j) This section does not apply to officers designated for limited duty under section 5596 of this title.

[§ 6384. Regular Navy and Regular Marine Corps; officers having less than 20 years of service; discharge for unsatisfactory performance of duty; severance pay; reversion of limited duty officers to prior status

[(a) Each selection board convened under chapter 543 and each board of officers convened under section 5787d of this title to recommend officers for promotion shall report, from among those officers eligible for consideration, the name of each officer with less than 20 years of service whose record, in the opinion of the board, indicates his unsatisfactory performance of duty in his present grade, and, in the opinion of the board, indicates that he would not satisfactorily perform the duties of a higher grade.

[(b) Each officer on the active list of the Navy or the Marine Corps whose name is reported under this section shall, subject to subsection (d), be honorably discharged from the naval service on June 30 of the fiscal year in which his name is so reported, or, in the discretion of the Secretary of the Navy, on any earlier data if the officer so requests, with a lump-sum payment computed on the basis of two months' basic pay received at the time of discharge multiplied by the number of years of service, but the payment may not be more than two years' basic pay. The acceptance of a lump-sum payment under this section does not deprive a person of any retirement benefits from the United States. However, there shall be deducted from each of his retirement payments so much thereof as is based on the service for which he has received payment under this section, unless the total deductions equal the amount of the lump-sum payments. However, no person is entitled to a lump-sum payment under this section that is more than $15,000.

[(c) The years of service that are counted under subsection (b) are—

[(1) for a male line officer of the Navy or a male officer of the Marine Corps, his years of total commissioned service as computed under section 6387 of this title;

[(2) for a staff corps officer, other than a woman officer appointed under section 5590 of this title and other than an officer in the Nurse Corps, his years of total commissioned service as computed under section 6388 of this title;

[(3) for an officer serving in the grade of lieutenant (junior grade) in the Nurse Corps, the person's years of total commissioned service as computed under section 6388 of this title;

[(4) for an officer serving in a grade above lieutenant (junior grade) in the Nurse Corps, the person's years of active service as computed under section 6396 of this title; and

[(5) for a woman officer appointed under section 5590 of this title, her years of active commissioned service in the Navy or the Marine Corps.

[(d) Each officer designated for limited duty whose name is reported under this section has the option of reverting to a lower grade instead of being discharged. Any such officer who had the permanent status of a warrant officer when first appointed as an officer designated for limited duty may revert to the grade and status he would hold if he had not been so appointed. Any such officer who had a permanent grade below the grade of warrant officer, W-1, when first appointed as an officer designated for limited duty may revert to the grade and status he would hold if he had not been so appointed but had instead been appointed a warrant officer, W-1.

[(e) In any computation to determine the grade and status to which an officer may revert under subsection (d), all active service as an officer designated for limited duty or as a temporary or reserve officer is included.

[§ 6385. Officers appointed under sections 5231, 5232, 5787, or 5787d of this title: grade for purpose of preceding sections

[For the purpose of the preceding sections of this chapter, an officer serving in a grade in which he was appointed under section 5231, 5232, 5787, of 5787d of this title is considered as serving in the grade he would hold if he had not been so appointed.

[§ 6386. Suspension: preceding sections

[(a) The President may suspend any provision of the preceding sections of this chapter relating to officers serving in the grades of lieutenant and lieutenant (junior grade) in the Navy, other than women officers appointed under section 5590 of this title, or relating to male officers serving in the grades of captain and first lieutenant in the Marine Corps during any period when—

[(1) the number of male officers serving on active duty in the grade of ensign and above in the line of the Navy exceeds the number of male officers on the active list in the line of the Navy; and

[(2) he determines that the needs of the service so require.

[(b) Officers in the following categories are not counted as officers serving on active duty for the purpose of clause (1) of subsection (a):

[(1) Retired officers.

[(2) Officers of the Naval Reserve assigned to active duty for training.

[(3) Officers of the Naval Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve.

[(4) Officers of the Naval Reserve ordered to temporary active duty to prosecute special work.

[(c) During a war or national emergency, the President may suspend any provision of the preceding sections of this chapter. Such a suspension may not continue beyond September 30 of the fiscal year following that in which the war or national emergency ends.

[§ 6387. Regular Navy, male line officers; Regular Marine Corps, male officers: computation of total commissioned service

[(a) For the purpose of the preceding sections of this chapter, the total commissioned service of a male officer on the active list in the line of the Navy or of a male officer on the active list of the Marine Corps who has served continuously on the active list since his appointment in the grade of ensign or second lieutenant, either upon graduation from the Naval Academy or under section 2106, 2107, or 6909 of this title, is computed from June 30 to the fiscal year in which he accepted that appointment.

[(b) Each other male commissioned officer on the active list in the line of the Navy or on the active list of the Marine Corps is considered to have the same total commissioned service, for the purpose of the preceding sections of this chapter, as the officer described in subsection (a) with the maximum total commissioned service who—

[(1) has not lost numbers of precedence; and

[(2) is, or at any time has been, junior to the other officer for the purposes of eligibility for promotion and selection for promotion during that other officer's latest period of continuous service on the active list.

[§ 6388. Regular Navy; certain staff corps officers: computation of total commissioned service

[(a) For the purpose of the preceding sections of this chapter, the total commissioned service of each officer on the active list of the Navy in the Supply Corps or the Civil Engineer Corps who was initially appointed as a Regular or as a Reserve in the grade of ensign in the line or any staff corps or in the grade of lieutenant (junior grade) in the Civil Engineer Corps and who has served continuously on active duty since that appointment shall be computed from June 30, of the fiscal year in which he accepted that appointment. The provisions of this subsection are effective as of August 7, 1947.

[(b) For the purpose of the preceeding sections of this chapter, the total commissioned service of each officer initially appointed in the grade of lieutenant (junior grade) or ensign in any staff corps of the Navy except the Supply Corps and the Civil Engineer Corps, who has since that appointment served continuously on the active list of the Navy, is computed from June 30 of the fiscal year in which he accepted that appointment. However, this subsection does not apply to officers appointed under the Act of April 18, 1946, ch. 141 (60 Stat. 92).

[(c) Each other commissioned officer on the active list of the Navy in any staff corps is considered to have the same total commissioned service for the purpose of the preceding sections of this chapter as the officer in his corps described in subsection (a) or (b) having the maximum total commissioned service who—

[(1) has not lost numbers or precedence; and

[(2) is, or at any time has been, junior to the other officer for the purposes of eligibility for promotion and selection for promotion during that other officer's latest period of continuous service on the active list.

[(d) Notwithstanding subsection (c), each officer on the active list of the Navy in the Medical Service Corps appointed under the Act of April 18, 1946, ch. 141 (60 Stat. 92), is considered to have, for the purpose of the preceding sections of this chapter, total commissioned service equivalent to that of his running mate.

[(e) For the purpose of this chapter, the years of service to be credited to each officer, on the active list of the Navy in the Nurse Corps is based on—

[(1) the person's active service in the Nurse Corps and the Nurse Corps Reserve; and

[(2) the person's active service in the Nurse Corps and the Nurse Corps Reserve abolished by the Army-Navy Nurses Act of 1947 (61 Stat. 41).

All such active service is considered commissioned service for the purpose of this chapter.

[(f) Except as provided in subsection (d), this section does not apply to officers in the Nurse Corps or to women officers appointed under section 5590 of this title.]

§ 6389. Naval Reserve and Marine Corps Reserve; officers: elimination from active status; computation of total commissioned service

(a) Subject to section 1005 of this title, an officer in an active status in the Naval Reserve in the permanent grade of lieutenant or lieutenant (junior grade), and an officer in an active status in the Marine Corps Reserve in the permanent grade of captain or first lieutenant, who is considered as having twice failed of selection for promotion to the next higher grade may, in the discretion of the Secretary of the Navy, be eliminated from an active status.

(b) An officer who is to be eliminated from an active status under subsection (a) *or (f)* shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve and, if he requests it, shall be so transferred. If he is not so transferred, he shall, in the discretion of the Secretary, be transferred to the appropriate inactive status list or be discharged from the Naval Reserve or the Marine Corps Reserve.

(c) An officer in an active status in the Naval Reserve in the permanent grade of lieutenant commander or above, and an officer in an active status in the Marine Corps Reserve in the permanent grade of major or above, who is considered as having twice failed of selection for promotion to the next higher grade shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve. If he is not so transferred, he shall be discharged from the Naval Reserve or the Marine Corps Reserve if he has completed a period of total commissioned service equal to that

Grade		*Total commissioned service*
Navy	*Marine Corps*	
Captain	Colonel	30 years
Commander	Lieutenant colonel	26 years
Lieutenant commander	Major	20 years

Notwithstanding the first sentence of this subsection, the Secretary may defer the retirement or discharge of such number of officers serving in the grade of lieutenant commander as are necessary to maintain the authorized officer strength of the Ready Reserve, but the duration of such deferment for any individual officer may not be in excess of five years. Notwithstanding the first two sentences of this subsection, the Secretary may defer the retirement or discharge under this subsection of an officer serving in the permanent grade of lieutenant commander or above in the Naval Reserve or in the permanent grade of major or above in the Marine Corps Reserve for a period of time which does not exceed the amount of service in an active status which was credited to the officer at the time of his original appointment or thereafter under any provision of law, if the officer can complete at least 20 years of service as computed under section 1332 of this title during the period of such deferment. Notwithstanding the first two sentences of this subsection, the Secretary may defer the retirement or discharge under this subsection of such number of officers serving in the permanent grade of captain or commander in the Medical Corps, Chaplain Corps, or Dental Corps in the Naval Reserve as are necessary to provide for mobilization requirements.

(d) For the purposes of subsection (c), the total commissioned service of an officer who has served continuously in the Naval Reserve or the Marine Corps Reserve following appointment therein in the permanent grade of ensign or second lieutenant, as the case may be, shall be computed from June 30 of the fiscal year in which he accepted the appointment. **[**Each other officer is considered to have for this purpose as much total commissioned service as any officer in the line on the active list of the Navy, not restricted in the performance of duty, or any officer on the active list of the Marine Corps, not restricted in the performance of duty, as appropriate, who has served continuously since original appointment as ensign on the active list of the Navy or as second lieutenant on the active list of the Marine Corps, has not lost numbers or precedence, and is, or has been after September 6, 1947, junior to that other officer.**]** *For each officer is considered to have for this purpose as much total commissioned service as the years of active commissioned service of any regular officer on the active-duty list of the Navy not restricted in the performance of duty, or any regular officer on the active-list of the Marine Corps not restricted in the performance of duty, as appropriate, who has served continuously since original appointment as an ensign on the active-duty list of the*

Navy or as a second lieutenant on the active-duty list of the Marine Corps, has not lost numbers or precedence, and is, or has been after September 6, 1947, junior to that other officer. However, the total commissioned service that the other officer is considered to have may not be less than the actual number of years he has served as a commissioned officer in a grade above chief warrant officer, W-4.

[(e) This section applies to women officers appointed under section 5581 of this title, but not to other women reserve officers or to reserve officers in the Nurse Corps.]

(e) This section does not apply to women reserve officers or to reserve officers in the Nurse Corps.

(f)(1) An officer in an active status in the Naval Reserve who holds the permanent grade of commodore admiral who has 30 years of total commissioned service and has held the grade of commodore admiral for five years shall be eliminated from an active status unless he is on a list of officers recommended for promotion to rear admiral.

(2) An officer in an active status in the Naval Reserve who holds the permanent grade of rear admiral and has 35 years of total commissioned service and has held the grade of rear admiral for five years shall be eliminated from an active status.

[§ 6390. Regular Navy and Regular Marine Corps; officers: retirement at age 62

[(a) Each officer on the active list of the Navy or the Marine Corps serving in a grade below fleet admiral shall be retired by the President when he becomes 62 years of age unless the President defers his retirement. The President may defer the retirement of any such officer for as long as he considers advisable, subject to the following conditions:

[(1) The retirement of any such officer may not be deferred beyond the date on which he becomes 64 years of age.

[(2) Not more than ten officers whose retirement is so deferred may be on active duty at any one time.

[(b) Each officer retired under this section is entitled—

[(1) to the highest grade, permanent or temporary, held by him on active duty; and

[(2) to retired pay—

[(A) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) befored the date of the enactment of the Department of Defense Authorization Act, 1981, at the rate of 2½ percent of the basic pay of the grade in which he retired; or

[(B) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after the date of the enactment of the Department of Defense Authorization Act, 1981, at the rate of 2½ percent of the monthly retired pay base computed under section 1407(d) of this title;

multiplied by the number of years of service that may be credited to him under section 1405 of this title, but the retired pay may not be more than 75 percent of the basic pay or monthly retired pay base upon which the computation of retired pay is based.

* * * * * * *

[§ 6392. Regular Navy and Regular Marine Corps, officers having less than three years of service: revocation of appointments; reversion of certain officers to prior status

[(a) The Secretary of the Navy, under regulations prescribed by him, may revoke the appointment of any officer on the active list of the Navy or the Marine Corps who has less than three years of continuous service as an officer on the active list of the Navy or the Marine Corps.

[(b) Each officer who appointment is revoked under this section shall be discharged from the service without advance pay or allowances.

[(c) Any officer appointed in the Medical Service Corps under section 5579 of this title who had the permanent status of a warrant officer at the time of that appointment, and whose appointment is revoked under subsection (a), may be reappointed, without examination, to his former permanent status with the same lineal position and all other rights and benefits he would have had, or would have attained in due course, if he had not been appointed in the Medical Service Corps.

[§ 6393. Regular Navy and Regular Marine Corps; women officers: termination of appointments

[The Secretary of the Navy, under regulations prescribed by the President, may terminate the appointment of any women officer in the Regular Navy or the Regular Marine Corps.

[§ 6394. Regular Navy, rear admirals and commodores; Regular Marine Corps, major generals and brigadier generals: retirement on recommendation of board

[(a) The Secretary of the Navy may convene boards of officers to consider and recommend for retirement officers on the active list of the Navy serving in the grades of rear admiral and commodore and officers on the active list of the Marine Corps serving in the grades of major general and brigadier general.

[(b) Each board convened under this section to consider and recommend rear admirals and commodores for retirement shall be composed of not less than five officers on the active list of the Navy serving in grades above rear admiral. However, rear admirals on the active list in any staff corps may be detailed as members of any such board to consider and recommend officers of the staff corps for retirement.

[(c) Each board convened under this section to consider and recommend major generals for retirement shall be composed, as far as practicable of three officers on the active list of the Marine Corps serving in grades above major general. If there is an insufficient number of such officers available, officers on the active list in the line of the Navy serving in grades above rear admiral may be detailed to complete the prescribed membership.

[(d) Each board convened under this section to consider and recommend brigadier generals for retirement shall be composed, as far as practicable, of five officers on the active list of the Marine Corps serving in grades above brigadier general. If there is an insufficient number of such officers available, officers on the active list in the line of the Navy serving in the grade of rear admiral or above may be detailed to complete the prescribed membership.

[(e) The recommendation of each board convened under this section shall be submitted by the Secretary with his recommendation to the President for approval or disapproval, in whole or in part.

[(f) Each officer recommended for retirement by a board convened under this section, shall, if the recommendation is approved by the President, be retired on the first day of any month set by the Secretary, but not later than the first day of the seventh month after the date of the approval by the President.

[(g) Unless otherwise entitled to a higher grade, each officer retired under this section shall be retired in—

[(1) the highest grade, permanent or temporary, in which he served satisfactorily on active duty as determined by the Secretary; or

[(2) if the Secretary determines that he did not serve satisfactorily in his highest grade, the next lower grade in which he has served, but not lower than his permanent grade.

[(h) Unless otherwise entitled to higher pay, an officer retired under this section is entitled to retired pay—

[(1) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Department of Defense Authorization Act, 1981, at the rate of 2½ percent of the basic pay of the grade in which he retired; or

[(2) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after the date of the enactment of the Department of Defense Authorization Act, 1981, at the rate of 2½ percent of the monthly retired pay base computed under section 1407(d) of this title;

multiplied by the number of years of service that may be credited to him under section 1405 of this title, but the retired pay may not be more than 75 percent of the basic pay or monthly retired pay base upon which the computation of retired pay is based.

[§ 6395. Regular Navy and Regular Marine Corps; officers having less than 20 years of service: discharge during war or emergency for unsatisfactory performance of duty

[(a) Each board of officers convened under section 5787 of this title to recommend officers for promotion shall report, from among the officers whose names are presented to it for consideration, the name of each officer on active duty with less than 20 years of service whose record, in the opinion of the board, indicates his unsatisfactory performance of duty in his present grade and, in the opinion of the board, indicates that he would not satisfactorily perform the duties of a higher grade.

[(b) Each officer in the Regular Navy or the Regular Marine Corps not on a retired list holding a permanent appointment in the grade of warrant officer, W-1, or above, whose name is reported under this section, shall, except as otherwise provided in this section, be honorably discharged on the first day of the fourth month following that in which his name is so reported.

[(c) An officer who is under consideration for or undergoing disciplinary action of any kind may not be discharged under this section before the final disposition of his case. Thereafter, such an officer shall be separated from the naval service either under this section or under another provision of law, in the discretion of the Secretary of the Navy.

[(d) Each officer holding a permanent appointment as a warrant officer and temporarily appointed to a higher grade, whose name is reported under this section, has the option, instead of being discharged under this section, of reverting to the grade and status he would hold if he had not been so temporarily appointed.

[(e) Each officer designated for limited duty who, when first appointed as an officer designated for limited duty, had the permanent status of a warrant officer, and whose name is reported under this section, has the option, instead of being discharged under this section, of reverting to the grade and status he would hold if he had not been so appointed. Each officer designated for limited duty who, when first appointed as an officer designated for limited duty, had a permanent grade below the grade of warrant officer, W-1, and whose name is reported under this section, has the option, instead of being discharged under this section, of reverting to the grade and status he would hold if he had not been so appointed but had instead been appointed a warrant officer, W-1.

[(f) In any computation to determine the grade and status to which an officer may revert under this section, all active service as an officer designated for limited duty or as a temporary or reserve officer is included.

[(g) Each officer discharged under this section is entitled to a lump-sum payment equal to two months' basic pay at the time of discharge multiplied by the number of years of service, but such payment may not be more than one year's basic pay.

[(h) The years of service that are counted under subsection (g) are—

[(1) for a male line officer of the Navy or a male officer of the Marine Corps, his years of total commissioned service as computed under section 6387 of this title;

[(2) for a staff corps officer, other than a woman officer appointed under section 5590 of this title and other than an officer in the Nurse Corps, his years of total commissioned service as computed under section 6388 of this title;

[(3) for an officer in the Nurse Corps, the person's years of total commissioned service as computed under section 6388 of this title;

[(4) for a woman officer appointed under section 5590 of this title, her years of active commissioned service in the Navy or the Marine Corps.

[§ 6396. Regular Navy; officers in Nurse Corps in grade below commander: retirement or discharge

[(a) An officer on the active list of the Navy serving in the grade of lieutenant commander in the Nurse Corps shall, subject to the provisions of section 5777 of this title, be retired on June 30 of the fiscal year in which the officer—

[(1) is not on a promotion list;

[(2) is considered as having twice failed of selection for promotion to the grade of commander; and

[(3) has completed at least twenty years of active commissioned service as computed under section 6388 of this title.

[(b) An officer retired under this section shall be retired—

[(1) in the highest grade satisfactorily held by her on active duty as determined by the Secretary, but not lower than her permanent grade; and

[(2) with retired pay—

[(A) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Department of Defense Authorization Act, 1981, at the rate of 2½ percent of the basic pay of the grade in which she retired; or

[(B) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after the date of the enactment of the Department of Defense Authorization Act, 1981, at the rate of 2½ percent of the monthly retired pay base computed under section 1407(d) of this title;

multiplied by the number of years of service that may be credited to her under section 1405 of this title, but the retired pay may not be more than 75 percent of the basic pay or monthly retired pay base upon which the computation of retired pay is based and, in the case of retired pay computed under clause (A), may not be less than 50 percent of the basic pay upon which the computation of retired pay is based.

[(c) An officer on the active list of the Navy serving in the grade of lieutenant in the Nurse Corps shall be honorably discharged on June 30 of the fiscal year in which the officer

[(1) is not on a promotion list; and

[(2) has completed thirteen years of active commissioned service as computed under section 6388 of this title.

However, if she so requests she may be honorably discharged at any time during that fiscal year.

[(d) An officer on the active list of the Navy serving in the grade of lieutenant (junior grade) in the Nurse Corps shall be honorably discharged on June 30 of the fiscal year in which the officer—

[(1) is not on a promotion list; and

[(2) has completed seven years of active commissioned service as computed under section 6388 of this title.

However, if she so requests, she may be honorably discharged at any time during that fiscal year.

[(e) Each officer discharged under this section is entitled to a lump-sum payment equal to two months' basic pay at the time of discharge multiplied by the number of years of active commissioned service as computed under section 6388 of this title, but the payment may not be more than two years' basic pay or more than $15,000.]

§6397. Naval Reserve; officers in the Nurse Corps: elimination from active status

[(a) An officer of the Naval Reserve in any grade in the Nurse Corps may be eliminated from an active status under the conditions prescribed by this chapter for the separation from the active list of an officer on the active list of the Navy in the same grade in the Nurse Corps.]

(a) An officer of the Naval Reserve in any grade in the Nurse Corps may be eliminated from an active status under the conditions prescribed in this title for the separation from the active-duty list of a regular officer in the same grade.

(b) An officer who is to be eliminated from an active status under this section shall, if qualified, be given an opportunity to request transfer to the Retired Reserve and, if the person requests it, shall be so transferred. If the person is not transferred to the Retired Reserve, the person shall, in the discretion of the Secretary of the Navy, be transferred to the inactive status list or be discharged from the Naval Reserve.

(c) An officer may be eliminated from an active status under this section, only upon the recommendation of a board appointed by the Secretary and convened at such times as he directs.

§ 6403. Naval Reserve and Marine Corps Reserve; women officers: elimination from active status

(a) A woman officer in any grade in the Naval Reserve, other than an officer in the Nurse Corps or an officer appointed under section 5581 of this title *before the effective date of the Defense Officer Personnel Management Act,* may, in the discretion of the Secretary of the Navy, be eliminated from an active status under the conditions prescribed by this chapter *or chapter 36* for the retirement or discharge of a woman line *regular* officer in the same grade on the [active list] *active-duty list* of the Navy, or at any time after those conditions are met.

(b) A woman officer in any grade in the Marine Corps Reserve may, in the discretion of the Secretary, be eliminated from an active status under the conditions prescribed by this chapter *or chapter 36* for the retirement or discharge of a woman officer in the same grade on the [active list] *active-duty list* of the Marine Corps, or at any time after those conditions are met.

(c) For the purposes of subsections (a) and (b) all commissioned service is considered active commissioned service.

(d) An officer who is to be eliminated from an active status under this section shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve and, if she requests it, shall be so transferred. If she is not transferred to the Retired Reserve, she shall, in the discretion of the Secretary, be transferred to the appropriate inactive status list or be discharged from the Naval Reserve or the Marine Corps Reserve.

(e) An officer may be eliminated from an active status under this section, only upon the recommendation of a board appointed by the Secretary and convened at such times as he directs.

§ 6398. Regular Navy; women captains and commanders; Regular Marine Corps, women colonels and lieutenant colonels: retirement for length of service; retired grade and pay

[(a) Each woman officer on the active list of the Navy, appointed under section 5590 of this title, who holds a permanent appointment in the grade of captain and each woman officer on the active list of the Marine Corps who holds a permanent appointment in the grade of colonel shall be retired by the President on the first day of the month following the month in which she completes thirty years of active commissioned service in the Navy or the Marine Corps.

[(b) Each woman officer on the active list of the Navy, appointed under section 5590 of this title, who holds a permanent appointment in the grade of commander and is not on a promotion list for a higher permanent grade and each woman officer on the active list of the Marine Corps who holds a permanent appointment in the grade of lieutenant colonel and is not on a promotion list for a higher permanent grade shall be retired by the President on the first day of the month following the month in which she completes twenty-six years of active commissioned service in the Navy or the Marine Corps.

[(c) Each officer retired under this section—

[(1) unless otherwise entitled to a higher grade shall be retired in the permanent grade held by her at the time of retirement; and

[(2) is entitled to retired pay—

[(A) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Department of Defense Authorization Act, 1981, at the rate of 2½ percent of the basic pay of the grade in which she retired; or

[(B) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after the date of the enactment of the Department of Defense Authorization Act, 1981, at the rate of 2½ percent of the monthly retired pay base computed under section 1407(d) of this title;

multiplied by the number of years of service that may be credited to her under section 1405 of this title, but the retired pay may not be more than 75 percent of the basic pay or monthly retired pay base upon which the computation of retired pay is based and in the case of retired pay computed under clause (A), may not be less than 50 percent of the basic pay upon which the computation of retired pay is based.

[§ 6400. Regular Navy, women lieutenant commanders; Regular Marine Corps, women majors: retirement for length of service; retired grade and pay

[(a) Each woman officer on the active list of the Navy, appointed under section 5590 of this title, who holds a permanent appointment in the grade of lieutenant commander and each woman officer on the active list of the Marine Corps who holds a permanent appointment in the grade of major shall be retired on June 30 of the fiscal year in which—

[(1) she is not on a promotion list; and

[(2) she has completed 20 years of active commissioned service in the Navy or in the Marine Corps.

[(b) Each officer retired under this section—

[(1) unless otherwise entitled to higher grade, shall be retired in the permanent grade held by her at the time of retirement; and

[(2) is entitled to retired pay—

[(A) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Department of Defense Authorization Act, 1981, at the rate of 2½ percent of the basic pay of the grade in which she retired; or

[(B) in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after the date of the enactment of the Department of Defense Authorization Act, 1981, at the rate of 2½ percent of the monthly retired pay base computed under section 1407(d) of this title;

multiplied by the number of years of service that may be credited to her under section 1405 of this title, but the retired pay may not be more than 75 percent of the basic pay or monthly retired pay base upon which the computation of retired pay is based.

[§ 6401. Regular Navy, women lieutenants; Regular Marine Corps, women captains: discharge for length of service; severance pay

[(a) Each woman officer on the active list of the Navy, appointed under section 5590 of this title, who holds a permanent appointment in the grade of lieutenant and each woman officer on the active list of the Marine Corps who holds a permanent appointment in the grade of captain shall be honorably discharged on June 30 of the fiscal year in which—

[(1) she is not on a promotion list; and

[(2) she has completed 13 years of active commissioned service in the Navy or in the Marine Corps.

However, if she so requests, she may be honorably discharged at any time during that fiscal year.

[(b) Each officer discharged under this section is entitled to a lump-sum payment equal to 24 times the monthly basic pay to which she was entitled at the time of discharge. However, no person is entitled to a lump-sum payment under this section that is more than $15,000.

[§ 6402. Regular Navy, women lieutenants (junior grade); Regular Marine Corps, women first lieutenants: discharge for length of service; severance pay

[(a) Each woman officer on the active list of the Navy, appointed under section 5590 of this title, who holds a permanent appointment in the grade of lieutenant (junior grade) and each woman officer on the active list of the Marine Corps who holds a permanent appointment in the grade of first lieutenant shall be honorably discharged on June 30 of the fiscal year in which—

[(1) she is not on a promotion list; and

[(2) she has completed seven years of active commissioned service in the Navy or in the Marine Corps.

However, if she so requests, she may be honorably discharged at any time during that fiscal year.

[(b) Each officer discharged under this section is entitled to a lump-sum payment equal to two months' basic pay at the time of discharge multiplied by the number of years of commissioned service in the Navy or the Marine Corps.]

§ 6404. Treatment of fractions of years of service in computing retired pay and [severance] *separation* pay

In determining the total number of years of service to be used as a multiplier in computing retired pay and [lump-sum payments] *separation pay* on discharge under this chapter, a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded.

[§ 6407. Communication with election board

[Each officer eligible for consideration for continuation on the active list by a selection board convened under chapter 543 of this title has the right to send a communication through official channels at any time not later than ten days after the convening of that board inviting attention to any matter of record in the Department of the Navy concerning himself which he considers important in his case. The communication may not criticize any officer or reflect upon the character, conduct, or motive of any officer.]

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CHAPTER 575—RECALL TO ACTIVE DUTY

Sec.
[6481. Retired officers of the Regular Navy and Regular Marine Corps: authority to recall.]
6482. Retired enlisted members of the Regular Navy and Regular Marine Corps: authority to recall.
6483. Retired members: grade.
6484. Promotion of retired members to higher enlisted grades: retention of grade upon release from active duty.
6485. Members of the Fleet Reserve and Fleet Marine Corps Reserve: authority to recall.
6486. Members of the Fleet Reserve and Fleet Marine Corps Reserve: release from active duty.
[6487. Retired rear admirals: retired pay after two years of active duty.
[6488. Wartime appointments or promotions: retention of grade upon release from active duty.]

[§ 6481. Retired officers of the Regular Navy and Regular Marine Corps: authority to recall

[In time of war or national emergency declared by the President, the Secretary of the Navy may order any retired officer of the Regular Navy or the Regular Marine Corps to active duty at sea or on shore. At any other time the Secretary may order such a retired officer to active duty at sea or on shore only with his consent.]

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§ 6483. Retired members: grade

[(a) Except as provided in subsection (b), each retired member of the naval service, when recalled to active duty, shall be recalled in the grade held by him on the retired list.]

[(b)] An officer who has been advanced on the retired list or in the Retired Reserve under former section 6150 of this title to a grade above captain in the Navy or above colonel in the Marine Corps, when recalled to active duty, may, in the discretion of the Secretary of the Navy, be recalled either in the grade he holds on the retired list or in the Retired Reserve or in the grade from which he was advanced.

* * * * * * *

[§ 6487. Retired rear admirals: retired pay after two years of active duty

[Each officer holding a permanent appointment in the grade of rear admiral on the retired list who is entitled to the pay of the lower half of that grade, and who, in time of war or national emergency, serves satisfactorily on active duty for two years in that grade or in a higher grade, is thereafter entitled, when on inactive duty, to retired pay equal to 75 percent of the basic pay of a rear admiral in the upper half of that grade.

[§ 6488. Wartime appointments or promotions: retention of grade upon release from active duty

[(a) A retired member of the Regular Navy or the Regular Marine Corps or a member of—

[(1) the Naval Reserve;
[(2) the Marine Corps Reserve;
[(3) the Fleet Reserve; or
[(4) the Fleet Marine Corps Reserve;

who, while on active duty, is promoted under section 5787 of this title or appointed under section 5597 of this title, is entitled, upon release from that duty, to the highest grade satisfactorily held under such a promotion or appointment as determined by the Secretary of the Navy.

[(b) If a member covered by subsection (a) is later recalled to active duty, he shall, unless otherwise entitled to a higher grade, be recalled in the grade given him under that subsection.]

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PART III—EDUCATION AND TRAINING

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CHAPTER 601—OFFICER PROCUREMENT PROGRAMS

Sec.
[6909. Direct procurement: qualifications; retention or transfer to Reserve.]
6911. Aviation cadets: grade; procurement; transfer.
6912. Aviation cadets: benefits.
6913. Aviation cadets: appointment as reserve officers.
[6914. Reserve naval aviators: appointment in Regular Navy and Regular Marine Corps; eligibility; grade; rank.]
6915. Reserve student aviation pilots; reserve aviation pilots: appointments in commissioned grade.

[§ 6909. Direct procurement: qualifications; retention or transfer to Reserve

[(a) Appointments to the active list of the Navy in the grade of ensign in the line, the Supply Corps, the Civil Engineer Corps, and the Medical Service Corps and to the active list of the Marine Corps in the grade of second lieutenant may be made from male citizens who are under 25 years of age on June 30 of the calendar year in which appointed and who—

[(1) have satisfactorily completed a four-year course at an accredited college or university; or

[(2) are enlisted members of the Regular Navy or the Regular Marine Corps who demonstrate in a test that they have attained an educational level equivalent to that of a person who has satisfactorily completed a four-year course at an accredited college or university.

[(b) The date of rank of officers appointed under this section in any year is the date of graduation of midshipmen from the Naval Academy in that year. Selection for appointment in a staff corps under this section shall be made by a board of commissioned officers in the staff corps concerned.

[(c) When any officer appointed under this section has at least two years of satisfactory service as a commissioned officer, he may, on his application, have his appointment on the active list of the Navy or the active list of the Marine Corps terminated and may be appointed in the Naval Reserve or the Marine Corps Reserve, as appropriate, in the same grade and with the same date of rank that he had as a regular officer. In the discretion of the Secretary of the Navy, such a reserve officer may be released from active duty.

[(d) During the second quarter of each calendar year, the Secretary shall examine the record of each officer on the active list of the Navy or on the active list of the Marine Corps appointed under this section who—

[(1) in that year will have the third anniversary of the acceptance of his appointment; and

[(2) applies for retention as a permanent officer before that anniversary, but not later than March 31 of that year.

[(e) From among the officers whose records are so examined the Secretary shall select for retention as many as he considers necessary. The appointment of each officer not selected shall be terminated before July 1 of the calendar year of the third anniversay of the acceptance of his appointment, or not later than that anniversary if it occurs after June 30.

[(f) The appointment of each officer on the active list of the Navy or on the active list of the Marine Corps appointed under this section who does not apply for retention under this section shall be terminated not later than the third anniversary of the acceptance of his appointment.

[(g) Upon the termination of his appointment under subsection (e) or (f), a person may be appointed a lieutenant (junior grade) in the line or in a staff corps of the Naval Reserve or a first lieutenant in the Marine Corps Reserve, as appropriate, with a date of rank three years after the date of rank of his original commission.]

§ 6911. Aviation cadets: grade; procurement; transfer

(a) The grade of aviation cadet is a special enlisted grade in the naval service. Upon such regulations as the Secretary of the Navy prescribes, [male] citizens in civil life may be enlisted as, and [male] enlisted members of the naval service with their consent may be designated as, aviation cadets.

(b) Except in time of war or emergency declared by Congress, 20 percent of the aviation cadets procured in each fiscal year shall be procured from qualified enlisted members of the Regular Navy and the Regular Marine Corps.

(c) No person may be enlisted or designated as an aviation cadet unless—

(1) he agrees in writing that, upon his successful completion of the course of training as an aviation cadet, he will accept a commission as an ensign in the Naval Reserve or a second lieutenant in the Marine Corps Reserve, and will serve on active duty as such for at least three years, unless sooner released; and

(2) if under 21 years of age, he has the consent of his parent or guardian to his agreement.

(d) Under such regulations as the Secretary prescribes, an aviation cadet may be transferred to another enlisted grade or rating in the naval service, released from active duty, or discharged.

* * * * * * *

§ 6913. Aviation cadets: appointment as reserve officers

(a) An aviation cadet who fulfills the requirements of section [6023(b)] *2003* of this title may be appointed an ensign in the Naval Reserve or a second lieutenant in the Marine Corps Reserve and designated a naval aviator.

(b) Aviation cadets who complete their training at approximately the same time are considered for all purposes to have begun their commissioned service on the same date, and the decision of the Secretary of the Navy in this regard is conclusive.

[§ 6914. Reserve naval aviators: appointment in Regular Navy and Regular Marine Corps; eligibility; grade; rank

[(a) The President, by and with the advice and consent of the Senate, may appoint to the active list in the line of the Navy as many officers of the Naval Reserve, and may appoint to the active list of the Marine Corps as many officers of the Marine Corps Reserve, as he considers necessary. To be eligible for an appointment under this section an officer must—

[(1) be a naval aviator;

[(2) have successfully completed aviation cadet training when he was under 25 years of age;

[(3) establish his mental, moral, professional, and physical qualifications under such regulations as the Secretary of the Navy prescribes; and

[(4) have completed, on June 30 of the calendar year in which appointed, at least 18 months of continuous active service after he completes his aviation cadet training.

[(b) Each officer appointed under this section shall be appointed in the same grade that he holds in the Naval Reserve or the

Marine Corps Reserve. An officer appointed in the grade of ensign or second lieutenant ranks from the date he reported for continuous active duty as an officer of the Naval Reserve or the Marine Corps Reserve. An officer appointed in a grade above ensign or above second lieutenant ranks according to his date of rank in that grade in the Naval Reserve or the Marine Corps Reserve, as the case may be.

[(c) While an officer is serving in the grade in which appointed under subsection (a), the requirement of sea service under section 5770 of this title does not apply.**]**

§ 6915. Reserve student aviation pilots; reserve aviation pilots: appointments in commissioned grade

(a) Under such regulations as the Secretary of the Navy prescribes, enlisted members of the Naval Reserve and the Marine Corps Reserve may be designated as student aviation pilots.

(b) A member who is not a qualified civilian aviator may not be designated as a student aviation pilot unless he agrees in writing, with the consent of his parent or guardian if he is a minor, to serve on active duty for a period of two years after successfully completing flight training, unless sooner released. Such a student aviation pilot may be released from active duty or discharged at any time by any administrative authority prescribed by the Secretary.

(c) If he is a qualified civilian aviator, a student aviation pilot may be given a brief refresher course in flight training.

(d) While he is in flight training, a student aviation pilot shall have uniforms and equipment issued to him at Government expense.

(e) Under regulations prescribed by the Secretary, a student aviation pilot of the Naval Reserve or the Marine Corps Reserve may be designated an aviation pilot upon successfully completing flight training.

[(g)**]** *(f)* In time of peace, an aviation pilot who is obligated under subsection (b) to serve on active duty for a period of two years may serve, with his consent, for an additional period of not more than two years.

[(h)**]** *(g)* An aviation pilot of the Naval Reserve or the Marine Corps Reserve may be released from active duty or discharged at any time by any administrative authority prescribed by the Secretary.

[(i)**]** *(h)* An aviation pilot of the Naval Reserve or the Marine Corps Reserve may, if qualified under regulations prescribed by the Secretary, be appointed an ensign in the Naval Reserve or a second lieutenant in the Marine Corps Reserve, as appropriate.

CHAPTER 605—UNITED STATES NAVAL POSTGRADUATE SCHOOL

Sec.
7041. Function.
7042. Superintendent; assistants.
7043. Academic Dean.
7044. Civilian teachers: number; compensation.
7045. Officers of Army, Air Force, and Coast Guard: admission.
7046. Officers of foreign countries: admission.
7047. Conferring of degrees on graduates.

* * * * * * *

§ 7042. Superintendent; assistants

(a) The Secretary of the Navy shall detail as Superintendent of the Naval Postgraduate School an officer on the [active list] *active-duty list* in the line of the Navy eligible for command at sea not below the grade of captain. The Superintendent has military command of the Postgraduate School.

(b) The Secretary shall detail officers of the Navy and the Marine Corps of appropriate grades and qualifications to assist the Superintendent in—

(1) the advanced instruction and technical education of students; and

(2) the administration of the Postgraduate School.

§ 7043. Academic Dean

(a) There is at the Naval Postgraduate School the civilian position of Academic Dean. The Academic Dean shall be appointed, to serve for periods of not more than five years, by the Secretary of the Navy upon the recommendation of the Postgraduate School council consisting of the Superintendent, the Deputy Superintendent, and the directors of the Technical, Administrative, and Professional Divisions of the school.

(b) The Academic Dean is entitled to such compensation for his services as the Secretary prescribes, but not more than the rate of compensation [provided for grade 18 of the general schedule of the Classification Act of 1949, as amended] *authorized for grade GS-18 of the General Schedule under section 5332 of title 5.*

* * * * * * *

§ 7045. Officers of Army, Air Force, and Coast Guard: admission

(a) The Secretary of the Navy may permit officers of the Army, Air Force, and Coast Guard to receive instruction at the Naval Postgraduate School. The numbers and grades of such officers shall be as agreed upon the Secretary of the Navy with the Secretaries of the Army, Air Force, and [Treasury] *Transportation*, respectively.

(b) The Department of the Army, the Department of the Air Force, and the Department of [the Treasury] *Transportation* shall bear the cost of the instruction received by the students detailed for that instruction by the Secretaries of the Army, Air Force, and [Treasury] *Transportation*, respectively.

(c) While receiving instruction at the Postgraduate School, officers of the Army, Air Force, and Coast Guard are subject to the same regulations as apply to students who are officers of the naval service.

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CHAPTER 631—SECRETARY OF THE NAVY: MISCELLANEOUS POWERS AND DUTIES

* * * * * * *

§7204. Schools near naval activities: financial aid; transportation of dependents

(a) The Secretary of the Navy may—

(1) contribute, out of funds specifically appropriated for the purpose, to the support of schools in any locality where a naval activity is located if he finds that the schools available in the locality are inadequate for the welfare of the dependents of—

(A) members of the naval service;

(B) civilian officers and employees of the Department of the Navy;

(C) members of the Coast Guard when it is operating as a service in the Navy; and

(D) members of the [Environmental Science Services Administration] *National Oceanic and Atmospheric Administration* serving with the Navy;

who are stationed at the activity; and

(2) provide for the transportation of these dependents between the schools and the activity when the schools are not accessible by regular means of transportation.

* * * * * * *

§7205. Promotion of health and prevention of accidents

(a) The Secretary of the Navy may make such expenditures as he considers appropriate to prevent accidents and to promote the safety and occupational health of—

(1) members of the naval service on active duty;

(2) civilian officers and employees of the Department of the Navy;

(3) members of the Coast Guard when it is operating as a service in the Navy; and

(4) members of the [Environmental Science Services Administration] *National Oceanic and Atmospheric Administration* serving with the Navy.

The expenditures may include payments for clothing, equipment, and other materials necessary for the purposes of this section. Any appropriation available for the activities in which the personnel are engaged shall be available for these purposes.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the

Department of the Navy, with or without the authority to make successive redelegations.

* * * * * * *

§7211. Attendance at meetings of technical, professional, or scientific organizations

(a) The Secretary of the Navy may authorize—

(1) members of the naval service on active duty;

(2) civilian officers and employees of the Department of the Navy;

(3) members of the Coast Guard when it is operating as a service in the Navy; and

(4) members of the [Environmental Science Services Administration] *National Oceanic and Atmospheric Administration* serving with the Navy.

to attend meetings of technical, professional, scientific, and similar organizations, if the Secretary believes that their attendance will benefit the Department. The personnel may be reimbursed for their expenses at the rates prescribed by law.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

§7212. Employment of outside architects and engineers

(a) Whenever the Secretary of the Navy believes that the existing facilities of the Department of the Navy are inadequate and he considers it advantageous to national defense, he may employ, by contract or otherwise, without advertising and without reference to sections 305, 3324, [5101-5115, 5331-5338, 5341, 5342, and 7204 of title 5 and subchapter VI of chapter 53 of such] *and 7204, chapter 51, and subchapters III, IV, and VI of chapter 53 of* title 5, architectural or engineering corporations, or firms, or individual architects or engineers, to produce designs, plans, drawings, and specifications for the accomplishment of any naval public works or utilities project or for the construction of any vessel or aircraft, or part thereof.

* * * * * * *

CHAPTER 633—NAVAL VESSELS

* * * * * * *

§7299. Contracts: application of Public Contracts Act

Each contract for the construction, alteration, furnishing, or equipping of a naval vessel is subject to [the Act of June 30, 1936, chapter 881 (49 Stat. 2036)] *the Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", approved June 30, 1936 (commonly referred to as the "Walsh-Healy Act") (41 U.S.C. 35-45)*, as amended, unless the President determines that this requirement is not in the interest of national defense.

* * * * * * *

§7305. Sale of vessel stricken from Naval Vessel Register

(a) This section does not apply to a vessel the disposal of which is authorized by the Federal Property and Administrative Services Act of 1949 [, as amended] (40 U.S.C. 471 et seq.), if it is to be disposed of under that Act.

* * * * * * *

(k) A sale under this section of a vessel the disposal of which is authorized by the Federal Property and Administrative Services Act of 1949 [, as amended] (40 U.S.C. 471 et seq.), is subject to regulations under section 205 of that Act (40 U.S.C. 486).

* * * * * * *

§7307. Restriction on disposal

(a) Notwithstanding any other provision of law, no battleship, aircraft carrier, cruiser, destroyer, or submarine of the Navy may be sold, transferred, or otherwise disposed of, unless the Chief of Naval Operations certifies that it is not essential to the defense of the United States.

(b)(1) After [the date of enactment of this paragraph] *August 5, 1974*, no naval vessel in excess of 3,000 tons or less than 20 years of age may be sold, leased, granted, loaned, bartered, transferred, or otherwise disposed of to another nation unless the disposition thereof has been approved by law enacted after such date [of enactment].

(2) After [the date of enactment of this paragraph] *August 5, 1974*, any naval vessel not subject to the provisions of paragraph (1) may be sold, leased, granted, loaned, bartered, transferred, or otherwise disposed of to another nation in accordance with applicable provisions of law only after the Secretary of the Navy, or his designee, has notified the Committees on Armed Services of the Senate and the House of Representatives in writing of the proposed disposition and 30 days of continuous session of Congress have expired following the date on which notice was transmitted to such committees. For purposes of this paragraph, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 30-day period.

§7308. Transfer or gift of obsolete, condemned, or captured vessels

(a) Subject to [section 474 of title 40] *subsections (c) and (d) of section 602 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 474)*, the Secretary of the Navy may transfer by gift or otherwise, on terms prescribed by him, any obsolete or condemned vessel of the Navy or any captured vessel in the possession of the Department of the Navy to—

(1) any State, Territory, Commonwealth, or possession of the United States, or any municipal corporation or political subdivision thereof;

(2) the District of Columbia or the Canal Zone; or

(3) any corporation or association whose charter or articles of agreement denies it the right to operate for profit.

* * * * * * *

CHAPTER 641—NAVAL PETROLEUM RESERVES

Sec.
7420. Definitions.
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7422. Administration.
7423. Periodic re-examination of production requirements.
7424. Protection of oil reserves; contracts for conservation.
7425. Acquisition by condemnation and purchase.
7426. Cooperative or unit plans affecting [naval petroleum reserve numbered 1] *Naval Petroleum Reserve Numbered 1.*
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7435. Foreign interest.
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7437. Violations by lessee.
7438. Rifle, Colorado, plant; possession, use, and transfer of.

§ 7420. Definitions

[(a)] In this chapter—

(1) "national defense" includes the needs of, and the planning and preparedness to meet, essential defense, industrial, and military emergency energy requirements relative to the national safety, welfare, and economy, particularly resulting from foreign military or economic actions;

(2) "naval petroleum reserves" means the naval petroleum and oil shale reserves established by this chapter, including Naval Petroleum Reserve Numbered 1 (Elk Hills), located in Kern County, California, established by Executive order of the President, dated September 2, 1912; Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912; Naval Petroleum Reserve Numbered 3 (Teapot Dome), located in Wyoming, established by Executive order of the President, dated April 30, 1915; [Naval Petroleum Reserve Numbered 4, Alaska, established by Executive order of the President, dated February 27, 1923 (until redesignated as the National Petroleum Reserve in Alaska under the jurisdiction of the Secretary of the Interior as provided in the Naval Petroleum Reserves Production Act of 1976);] Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order dated June 12, 1919; Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1924;

(3) "petroleum" includes crude oil, gases (including natural gas), natural gasoline, and other related hydrocarbons, oil shale, and the products of any of such resources;

(4) "Secretary" means the Secretary of [the Navy;] *Energy;*

(5) "small refiner" means an owner of a refinery or refineries (including refineries not in operation) who qualifies as a small buisness refiner under the rules and regulations of the Small Business Administration; and

(6) "maximum efficient rate" means the maximum sustainable daily oil or gas rate from a reservoir which will permit economic development and depletion of that reservoir without detriment to the ultimate recovery.

* * * * * * *

§7422. Administration

(a) * * *

* * * * * * *

(c)(1) In administering Naval Petroleum Reserves Numbered 1, 2, and 3, the Secretary is authorized and directed—

(A) to further explore, develop, and operate such reserves;

[(B) commencing within ninety days after the date of enactment of the Naval Petroleum Reserves Production Act of 1976, to produce such reserves at the maximum efficient rate consistent with sound engineering practices for a period not to exceed six years after the date of enactment of such Act;]

(B) to produce such reserves at the maximum efficient rate consistent with sound engineering practices for a period ending not later than April 5, 1982;

(C) during such production period or any extension thereof to sell or otherwise dispose of the United States share of such petroleum produced from such reserves as [hereinafter provided] *provided in section 7430 of this title;* and

(D) to construct, acquire, or contract for the use of storage and shipping facilities on and off the reserves and pipelines and associated facilities on and off the reserves for transporting petroleum from such reserves to the points where the production from such reserves will be refined or shipped.

Any pipeline in the vicinity of a naval petroleum reserve not otherwise operated as a common carrier may be acquired by the Secretary by condemnation, if necessary, if the owner thereof refuses to accept, convey, and transport without [discrimiation] *discrimination* and at reasonable rates any petroleum produced at such reserve. With the approval of the Secretary, rights-of-way for new pipelines and associated facilities may be acquired by the exercise of the right of eminent domain in the appropriate United States district court. Such rights-of-way may be acquired in the manner set forth in the Act of February 26, 1931 [, chapter 307 (46 Stat. 1421; 40 U.S.C. 258(a))] *(40 U.S.C. 258a–258e),* and the prospective holder of the right-of-way is "the authority empowered by law to acquire the lands" within the meaning of that Act. Such new pipelines shall accept, convey, and transport without discrimination and at reasonable rates any petroleum produced at such reserves as a common carrier.

(2) [At the conclusion of the six-year production period authorized by paragraph (1)(b) of this subsection] *After April 5, 1982,* the President may extend the period of production in the case of any naval petroleum reserve for additional periods of not to exceed three years each—

(A) after the President requires an investigation to be made, in the case of each extension, to determine the necessity for continued production from such naval petroleum reserve;

(B) after the President submits to the congress, at least one hundred eighty days prior to the expiration of the current production period prescribed by this section, or any extension thereof, a copy of the report made to him on such investigation together with a certification by him that continued production from such naval petroleum reserve is in the national interest; and

(C) if neither House of Congress within ninety days after receipt of such report and certification adopts a resolution disapproving further production from such naval petroleum reserve.

(3) The production authorization set forth in paragraph (1)(B) of this subsection, in the case of Naval Petroleum Reserve Numbered 1, is conditioned upon the private owner of any lands or interests therein within such reserve agreeing with the Secretary to continue operations of such reserve under a unitized plan contract which adequately protects the public interest; however, if such agreement is not reached **[**within ninety days after the date of enactment of the Naval Petroleum Reserves Production Act of 1976**]** *by July 4, 1976,* the Secretary is authorized to exercise the authority for condemnation conferred by section 7425 of this chapter.

* * * * * * *

§7424. Protection of oil reserves; contracts for conservation

(a) To consolidate and protect the oil lands owned by the United States, the Secretary may—

(1) contract with owners and lessees of land inside or adjoining naval petroleum and reserves for—

(A) conservation of oil and gas; and

(B) compensation for estimated drainage in lieu of drilling or operating offset wells; and

(2) acquire privately owned lands or leases inside **[**naval petroleum reserve numbered 1**]** *Naval Petroleum Reserve Numbered 1* by exchange of—

(A) lands of the United States inside **[**naval petroleum reserve numbered 1**]** *Naval Petroleum Reserve Numbered 1;*

(B) the right to royalty production from any of the naval petroleum reserves; and

(C) the right to any money due the United States as a result of the wrongful extraction of petroleum products from lands inside **[**naval petroleum reserve numbered 1**]** *Naval Petroleum Reserve Numbered 1.*

(b) The Secretary shall report annually to Congress all agreements under this section.

§7425. Acquisition by condemnation and purchase

(a) Whenever the Secretary is unable to make arrangements he considers satisfactory for—

(1) exchanges of land or agreements for conservation authorized by section 7424 of this title; or

(2) contracts for joint, unit, or other cooperative plans with respect to lands or leases authorized by section 7426 of this title;

he may acquire, with the approval of the President, such privately owned lands and leases—

(1) by purchase, inside the naval petroleum reserves, or outside those reserves on the same geologic structure; and

(2) by condemnation, inside [naval petroleum reserve numbered 1] *Naval Petroleum Reserve Numbered 1*, or, if there is substantial drainage, outside that reserve on the same geologic structure.

(b) The Secretary shall report annually to Congress all proceedings for purchase and condemnation under this section.

§7426. Cooperative or unit plans affecting [naval petroleum reserve numbered 1] *Naval Petroleum Reserve Numbered 1*

(a) Subject to the provisions of section 7422(c), the Secretary may contract for joint, unit, or other cooperative plans of exploration, prospecting, conservation, development, use, and operation of lands owned or controlled by the United States inside [naval petroleum reserve numbered 1] *Naval Petroleum Reserve Numbered 1* and lands owned or leased by private interests—

(1) inside [naval petroleum reserve numbered 1] *Naval Petroleum Reserve Numbered 1*; or

(2) outside [naval petroleum reserve numbered 1] *Naval Petroleum Reserve Numbered 1* on the same geologic structure.

* * * * * * *

§7427. Cooperative or unit plans in the naval petroleum reserves

The Secretary, with the consent of the President, may make agreements, with respect to lands inside the naval petroleum reserves, of the same type as the Secretary of the Interior may make under section [226e of title 30] *17(j) of the Act of February 25, 1920 (30 U.S.C. 226(j))*. No such agreement made by the Secretary may extend the term of any lease unless the agreement so provides.

* * * * * * *

§7430. Disposition of products

(a) * * *

* * * * * * *

(c) In no event shall the Secretary permit the award of any contrct which would result in any person obtaining control, directly or indirectly, over more than 20 [per centum] *percent* of the estimated annual United States share of petroleum produced from Naval Petroleum Reserve Numbered 1.

(d) Each proposal for sale under this title shall provide that the terms of every sale of the United States share of petroleum from the naval petroleum reserves shall be so structured as to give full and equal opportunity for the acquisition of petroleum by all interested persons, including major and independent oil producers and refiners alike. When the Secretary, in consultation with the Secretary of the Interior, determines that the public interests will be served by the sale of petroleum to small refiners not having their own adequate sources of supply of petroleum, the Secretary is authorized and directed to set aside a portion of the United States share of petroleum produced for sale to such refiners under the provisions of this section for processing or use in such refineries, except that—

(1) none of the production sold to small refiners may be resold in kind;

(2) production must be sold at a cost of not less than the prevailing local market price of comparable petroleum;

(3) the set-aside portion may not exceed 25 [per centum] *percent* of the estimated annual United States share of the total production from all producing naval petroleum reserves; and

(4) notwithstanding the provisions of subsection (b) of this section, the Secretary may, at his discretion if he deems it to be in the public interest, prorate such petroleum among such refiners for sale, without competition, at not less than the prevailing local market price of comparable petroleum.

(e) Any petroleum produced from the naval petroleum reserves, except such petroleum which is either exchanged in similar quantities for convenience or increased efficiency or transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1969 [(83 Stat. 841)] *(50 U.S.C. App. 2401 et seq.)* and, in addition, before any petroleum subject to this section may be exported under the limitations and licensing requirement and penalty and enforcement provisions of the Export Administration Act of 1969, the President must make and publish an express finding that such exports will not diminish the total quality or quantity of petroleum available to the United States and that such exports are in the national interest and are in accord with the Export Administration Act of 1969.

(f) During the period of production or any extension thereof authorized by section 7422(c) *of this title*, the consultation and approval requirements of section 7431(a)(3) *of this title* are waived.

* * * * * * *

(i) As used in this section, the term "antitrust laws" means—

[(1) the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

[(2) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.), as amended;

[(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

[(4) sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; or

[(5) sections 2, 3, and 4 of the Act of June 19, 1936, chapter 592 (15 U.S.C. 13a, 13b, and 21a).]

(1) the Sherman Act (15 U.S.C. 1 et seq.);

(2) the Clayton Act (15 U.S.C. 12 et seq.);

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

(4) sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9); and

(5) sections 2, 3, and 4 of the Act of June 19, 1936 (commonly referred to as the "Robinson-Patman Act") (15 U.S.C. 13a, 13b, and 21a).

(j) Any pipeline which accepts, conveys, or transports any petroleum produced from Naval Petroleum Reserves Numbered 1 or Numbered 3 shall accept, convey, and transport without discrimination and at reasonable rates any such petroleum as a common carrier insofar as petroleum from such reserves is concerned. Every contract entered into by the Secretary for the sale of any petroleum owned by the United States which is produced from such reserves shall contain provisions implementing the requirements of the preceding sentence if the contractor owns a controlling interest in any pipeline or any company operating any pipeline, or is the operator of any pipeline, which carries any petroleum produced from such naval petroleum reserves. The Secretary may promulgate rules and regulations for the purpose of carrying out the provisions of this section and he, or the Secretary of the Interior where the authority extends to him, may declare forfeit any contract, operating agreement, right-of-way, permit, or easement held by any person violating any such rule or regulation. This section shall not apply to any natural gas common carrier pipeline operated by any person subject to regulation under the Natural Gas Act *(15 U.S.C. 717 et seq.)* or any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

* * * * * * *

7432. Authorizations of appropriations

(a) Funds for the following purposes may not be appropriated unless such appropriations have been specifically authorized by law:

(1) Exploration, prospecting, conservation, development, use, operations, and production of the naval petroleum reserves as authorized by this chapter[;].

(2) Production (including preparation for production) as authorized by this chapter or as may be authorized after April 5, 1976.

(3) The construction and operation of facilities both within and outside the naval petroleum reserves incident to the production and the delivery of petroleum, including pipelines and shipping terminals.

Sums appropriated for such purposes shall remain available until expended.

* * * * * * *

§ 7434. Quarterly reports to Armed Services Committees

Within thirty days after the close of each quarter, the Secretary [of the Navy] shall report to the Committees on Armed Services of the Senate and House of Representatives the production from the naval petroleum reserves during the preceding quarter.

* * * * * * *

§ 7438. Rifle, Colorado, Plant; possession, use, and transfer of

(a) The [Administrator of the Energy Research and Development Administration] *Secretary* shall take possession of the experimental demonstration facility near Rifle, Colorado, which was constructed and operated by the Department of the Interior on lands on or near the naval oil shale reserves under the Act of April 5, 1944[, chapter 172 (58 Stat. 190), as amended] *(30 U.S.C. 321 et seq).*

(b) The [Administrator of the Energy Research and Development Administration] *Secretary,* subject to the approval of the President, shall by contract, lease, or otherwise encourage the use of the facility described in subsection (a) [above] in research, development, test, evaluation, and demonstration work. For such purposes the [Administrator of the Energy Research and Development Administration may use, lease for use by institutions, organizations, or individuals, public or private, or transfer by letter to the Secretary the facility described in subsection (a) above] *Secretary may use or lease for use by institutions, organizations, or individuals, public or private, the facility described in subsection (a)* and may construct, install, and operate, or lease for operation additional experimental facilities on such lands. The [Administrator of the Energy Research and Development Administration may, after consultation by the Secretary] *Secretary may, after consultation* with the Committees on Armed Services of the Senate and the House of Representatives, mine and remove, or authorize the mining and removal, of any oil shale or products therefrom from lands in the naval oil shale reserves that may be needed for such experimentation.

(c) Nothing [herein contained] *in this chapter* shall be construed—

(1) to authorize the commercial development and operation of the naval oil shale reserves by the Government in competition with private industry; or

(2) in diminution of the responsibility of the Secretary in providing oil shale and products therefrom for needs of national defense.

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CHAPTER 645—PROCUREMENT OF SUPPLIES AND SERVICES

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§ 7522. Contracts for research

(a) * * *.

(b) Section [529 of title 31] *3648 of the Revised Statutes (31 U.S.C. 529)* does not apply to advance, progress, or other payments made with respect to a contract under this section.

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CHAPTER 647—DISPOSAL OF OBSOLETE OR SURPLUS MATERIAL

* * * * * * *

§7541. Obsolete and other material: gift or sale to Boy Scouts of America, Naval Sea Cadet Corps and Young Marines of the Marine Corps League

Subject to regulations under section [486 of title 40] *205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)*, the Secretary of the Navy may—

(1) give obsolete material not needed for naval purposes; and

(2) sell other material that may be spared at a price representing its fair value;

to the Boy Scouts of America for the sea scouts, to the Naval Sea Cadet Corps for the sea cadets, and to the Young Marines of the Marine Corps League for the young marines. The cost of transportation and delivery of material given or sold under this section shall be charged to the Boy Scouts of America, to the Naval Sea Cadets, or to the Young Marines of the Marine Corps League, as the case may be.

§7541a. Uniform clothing: sale to Naval Sea Cadet Corps

Subject to regulations under section [486 of title 40] *205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)*, the Secretary of the Navy, under regulations prescribed by him, may sell any item of enlisted naval uniform clothing that may be spared, at a price representing its fair value, to the Naval Sea Cadet Corps for the sea cadets and to any Federal or State maritime academy having a department of naval science for the maritime cadets and midshipmen. The cost of transportation and delivery of items sold under this section shall be charged to the Naval Sea Cadet Corps and to such Federal and State maritime academies.

§7542. Excess clothing: sale for distribution to needy

(a) Subject to regulations under section [486 of title 40] *205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)*, the Secretary of the Navy, under regulations prescribed by him, may sell, at nominal prices, to recognized charitable organizations, to States and subdivisions thereof, and to municipalities nonregulation and excess clothing that may be available for distribution to the needy. The clothing may be sold only if the purchaser agrees not to resell it but to give it to the needy.

(b) A fair proportionate allotment of clothing to be sold under this section shall be set aside for distribution in each State and the District of Columbia. An allotment so set aside may not be sold for other distribution until at least 30 days after the allotment was made.

* * * * * * *

§ 7545. Obsolete material and articles of historical interest: loan or gift

(a) Subject to regulations under section [486 of title 40] *205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)*, the Secretary of the Navy, under regulations prescribed by him, may lend or give, without expense to the United States, captured, condemned, or obsolete ordnance material, books, manuscripts, works of art, drawings, plans, and models, other condemned or obsolete material, trophies, and flags, and other material of historic interest not needed by the Department of the Navy, to—

(1) * * *.

* * * * * * *

(b) Records of the Government as defined in section [366] *3301* of title 44 may not be disposed of under this section.

* * * * * * *

CHAPTER 649—QUARTERS, UTILITIES, AND RELATED SERVICES

* * * * * * *

§ 7571. Quarters or other accommodations: to whom furnished

(a) Under such regulations as the Secretary of the Navy prescribes, public quarters including heat, light, water, and refrigeration may be furnished for personnel in the following categories who are on active duty:

(1) Members of the naval service.

(2) Members of the Coast Guard when it is operating as a service in the Navy.

(3) Members of the [Environmental Science Services Administration] *National Oceanic and Atmospheric Administration* serving with the Navy.

If public quarters are not available for any such member, the Secretary may provide lodging accommodations for him. Lodging accommodations so provided may not be occupied by the member's dependents.

* * * * * * *

§ 7572. Quarters: accommodations in place of for members on sea duty

(a) If public quarters are not available, the Secretary of the Navy may provide lodging accommodations for any—

(1) member of the naval service;

(2) member of the Coast Guard when it is operating as a service in the Navy; or

(3) member of the [Environmental Science Services Administration] *National Oceanic and Atmospheric Administration* serving with the Navy;

on sea duty who is deprived of his quarters on board ship because of repairs or because of other conditions that make his quarters uninhabitable. Lodging accommodations so provided may not be occupied by the member's dependents.

* * * * * * *

§ 7576. Quarters: extension telephones

(a) Under regulations prescribed by the Secretary of the Navy appropriated funds may be used to pay the cost of installation and use, other than for personal long distance calls, of extension telephones connecting public quarters occupied by personnel in the following categories with the switchboards of their official stations:

(1) Members of the naval service.

(2) Members of the Coast Guard when it is operating as a service in the Navy.

(3) members of the [Environmental Science Services Administration] National Oceanic and Atmospheric Administration serving with the Navy.

* * * * * * *

CHAPTER 651—SHIPS' STORES AND COMMISSARY STORES

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§ 7605. Acceptance of Government checks outside the United States

Notwithstanding sections [521 and 543 of title 31] *3639 and 3651 of the Revised Statutes (31 U.S.C. 521 and 543)*, the Secretary of the Navy may authorize the officer in charge of any commissary store or ship's store ashore located outside the United States to—

(1) accept any Government check tendered by a retired member of the Navy or the Marine Corps, a member of the Naval Reserve or the Marine Corps Reserve, or a member of the Fleet Reserve or the Fleet Marine Corps Reserve, if the member is the payee of the check and the check is tendered in payment of amounts due from the member to the store; and

(2) refund in cash any difference between the amound due and the amount of the tendered check.

* * * * * * *

CHAPTER 657—STAY OF JUDICIAL PROCEEDINGS

* * * * * * *

§ 7721. Scope of chapter

(a) This chapter applies to any suit against the United States under [sections 781-790 of title 46] *the Act of March 3, 1925 (commonly referred to as the "Public Vessels Act") (46 U.S.C. 781-790)* for—

(1) damage caused by a vessel in the naval service; or

(2) compensation for towage or salvage services, including contract salvage, rendered to a vessel in the naval service.

(b) In this chapter "vessel in the naval service" means—

(1) any vessel of the Navy, manned by the Navy, or chartered on bareboat charter to the Navy; or

(2) when the Coast Guard is operating as a service in the Navy, any vessel of the Coast Guard, manned by the Coast Guard, or chartered on bareboat charter to the Coast Guard.

* * * * * * *

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* * * * * * *

CHAPTER 805—THE AIR STAFF

* * * * * * *

§ 8034. Chief of Staff: appointment; duties

(a) * * *

(b) The Chief of Staff, while so serving, has the grade of general without vacating his regular or reserve grade[, and is counted as one of the officers authorized to serve in a grade above lieutenant general under section 8066 of this title].

* * * * * * *

CHAPTER 807—THE AIR FORCE

Sec.

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* * * * * * *

§ 8062. Policy; composition; aircraft authorization

(a) * * *

* * * * * * *

(e) Subject to subsection (f) of this section [and chapter 831], *chapter 831 of this title, and the strength authorized by law pursuant to section 138* of this title, the authorized strength of the Air Force is 70 Regular Air Force groups and such separate Regular Air Force squadrons, reserve groups, and supporting and auxiliary regular and reserve units as required.

* * * * * * *

[§ 8066. Generals and lieutenant generals

[(a) The President may designate positions of importance and responsibility to carry the grade of general or lieutenant general. He may assign to those positions officers of the Air Force on active duty in any grade above brigadier general. While he holds one of those positions an officer has the grade specified for the position if appointed thereto by and with the advice and consent of the Senate.

[(b) The number of positions designated under subsection (a) may not be more than 15 percent of the number of general officers on active duty. Not more than 25 percent of those positions may be designated as positions to be held by officers in the grade of general.

[(c) General officers on the active list of the Regular Air Force who are specifically authorized by law to hold any civil office under the United States, or any instrumentality thereof, are in addition to the numbers authorized by this section.

[(d) Appointment to the grade of general or lieutenant general under subsection (a) does not vacate the Regular or Reserve grade held by the officer. When his appointment under that subsection terminates, he is entitled to resume any other grade that he may then be entitled to hold.]

§ 8067. Designation: officers to perform certain professional functions

(a) Medical functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary of the Air Force [in conformity with section 8289 or 8294 of this title,] and who are designated as medical officers.

(b) Dental functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary [in conformity with section 8294 of this title,] and who are designated as dental officers.

(c) Veterinary functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as veterinary officers.

(d) Medical service functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as medical service officers.

(e) Nursing functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary [in conformity with section 8291 of this title,] and who are designated as Air Force nurses.

(f) [Medical specialist] *Biomedical science* functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as [medical specialists] *biomedical science officers.*

(g) Judge advocate functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as judge advocates.

(h) Chaplain functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary [in conformity with section 8293 of this title,] and who are designated as chaplains.

(i) Other functions in the Air Force requiring special training or experience shall be performed by members of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as being in named categories.

* * * * * * *

PART II—PERSONNEL

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CHAPTER 831—STRENGTH

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[8203. Regular Air Force: members on active duty.
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8224. Air National Guard of United States.
8225. Air National Guard and Air National Guard of United States, exclusive of members on active duty.
[8230. Personnel detailed outside Department of Defense.]

[§ 8201. Air Force: members on active duty

[(a) The authorized strength of the Air Force in members on active duty, exclusive of—

[(1) officer candidates;

[(2) aviation cadets;

[(3) Reserves on active duty for training;

[(4) members paid from appropriations for the Air National Guard or the Air Force Reserve;

[(5) Reserves ordered to active duty in an emergency; and

[(6) enlisted members in a reserve officers' training corps or serving as cadets at the United States Air Force Academy, the United States Military Academy, or the United States Coast Guard Academy, or as midshipmen at the United States Naval Academy or in the Naval Reserve;

is 502,000.

[(b) The authorized daily average strength of the Air Force in members on active duty during the fiscal year, exclusive of—

[(1) officer candidates;

[(2) Reserves on active duty for training purposes only;

[(3) members employed in the Selective Service System; and

[(4) enlisted members in a reserve officers' training corps or serving as cadets at the United States Air Force Academy, the United States Military Academy, or the United States Coast Guard Academy, or as midshipmen at the United States Naval Academy or in the Naval Reserve;

is 502,000.]

§ 8202. Air Force: [officers in certain commissioned grades] *strength in grade; general officers*

[(a) The authorized strength of the Air Force in officers on active duty in each of the following grades on the last day of each fiscal year, exclusive of officers on active duty for training only and officers serving with other departments or agencies on a reimbursable basis, is, except as provided in subsections (e) and (f), based on the actual strength of the Air Force in those officers, as follows:

[*If the actual strength*[1] *is—*	[*The authorized strength in grade is—*			
	For general officers	*For colonels*	*For lieutenant colonels*	*For majors*
50,000	312	3,133	6,065	9,455
60,000	324	3,540	6,822	11,298
70,000	336	3,857	7,427	13,125
80,000	349	4,107	7,920	14,936
90,000	363	4,299	8,316	16,740
100,000	380	4,440	8,620	18,530
110,000	398	4,750	9,350	20,295
120,000	416	5,020	10,056	22,056
130,000	434	5,273	10,725	23,803
140,000	452	5,484	11,368	25,536
150,000	470	5,665	12,000	27,255
160,000	478	5,842	12,608	28,976
170,000	486	5,974	13,175	30,685
180,000	495	6,075	13,716	32,328

[[1] As determined by the Secretary of the Air Force.

If the actual strength is determined to be between two of the figures named in the first column of the table, the corresponding authorized strengths in grade are determined by mathematical interpolation between the respective authorized strengths named in the table. If it is determined to be more than 180,000, the Secretary shall fix the corresponding authorized strengths in grade in general conformity with the table.

[(b) Not more than one-half of the general officer strength may be in grades above brigadier general.

[(c) A vacancy in any grade may be filled by an authorized appointment in any lower grade.

[(d) In time of war, or of national emergency declared after May 5, 1954, by Congress or the President, the President may suspend the operation of any provision of this section.

[(e) The authorized strengths of the Air Force in officers who are designated as medical or dental officers of the Air Force in grades below brigadier general shall be based on the needs of the Air Force as determined by the Secretary under regulations to be prescribed by the Secretary of Defense.

[(f) In determining the authorized strength of the Air Force under subsection (a), the strengths authorized for those who are designated as medical or dental officers of the Air Force shall be excluded.]

(a) The authorized strength of the Air Force in general officers on active duty on the last day of each fiscal year, exclusive of officers on active duty for training only and officers serving with other departments or agencies on a reimbursable basis, is, except as provided in subsection (d), based on the total number of officers authorized for the Air Force in all commissioned grades under section 521 of this title on active duty as follows:

If the total number of officers authorized in all commissioned grades is—	*The authorized strength for general officers is—*
50,000	*312*
60,000	*324*
70,000	*336*
80,000	*349*
90,000	*363*
100,000	*380*
110,000	*398*
120,000	*416*
130,000	*434*
140,000	*452*
150,000	*470*
160,000	*478*
170,000	*486*
180,000	*495.*

If the actual strength in commissioned officers on active duty is between two of the figures listed in the first column of the table, the authorized strength for general officers is determined by mathematical interpolation between the respective authorized strengths listed in the table. If such strength is more than 180,000, the Secretary of the Air Force shall fix the corresponding strength in general officers in general conformity with the table.

(b) Whenever the number of general officers is less than the number authorized under this section, the difference between the two numbers may be applied to increase the number authorized

under section 523 of this title for any lower grade to which such section is applicable.

(c) In time of war, or of national emergency declared by Congress or the President after November 30, 1980, the President may suspend the operation of any provision of this section. So long as such war or national emergency continues, any such suspension may be extended by the President. Any such suspension shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on the date of the termination of the war or national emergency, whichever occurs first. With respect to the end of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621–1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of the termination of the emergency.

[§ 8203. Regular Air Force: members on active duty

[The authorized strenght of the Regular Air Force in members on active duty, exclusive of officer candidates and aviation cadets, is 502,000 less the number of members of the Air Force on active duty who are neither members of the Regular Air Force nor members of the Air Force in the categories listed in section 8201(a)(1)–(6) of this title.

[§ 8204. Regular Air Force: commissioned officers on active list

[The authorized strength of the Regular Air Force in commissioned officers on the active list is the sum of—

[(1) the numbers authorized by section 8205 of this title;

[(2) the number of permanent professors of the United States Air Force Academy authorized by section 9331 of this title and the registrar thereof; and

[(3) the numbers in designated categories specifically authorized by law as additional numbers.

[§ 8205. Regular Air Force: commissioned officers on active list, exclusive of certain categories

[(a) The authorized strength of the Regular Air Force in commissioned officers on the active list, exclusive of permanent professors and the registrar of the United States Air Force Academy and members in designated categories specifically authorized by law as additional numbers, is 69,425.

[(b) Subject to subsection (a), the Secretary of Defense, with the approval of the President, shall estimate each year, for each of the five years following that year, the strenght of the Regular Air Force in commissioned officers on the active list exclusive of officers specifically authorized by law as additional numbers.

[§ 8206. Regular Air Force: Commissioned officers on active list; Air Force nurses

[(a) The authorized strength in Air Force nurses on the active list of the Regular Air Force is as prescribed by the Secretary of the Air Force within the authorized strength of the Regular Air Force in commissioned officers on the active list.

[§ 8207. Regular Air Force: Commissioned officers on active list; medical specialists

[(a) The authorized strenght in Air Force medical specialists on the active list of the Regular Air Force is as prescribed by the Secretary of the Air Force within the authorized strength of the Regular Air Force in commissioned officers on the active list.

[§ 8208. Regular Air Force: commissioned officers on active list; female commissioned officers, other than those designated under section 8067 of this title to perform professional functions

[(a) The authorized strength in female commissioned officers on the active list of the Regular Air Force, other than those designated under section 8067 of this title to perform professional functions, is as prescribed by the Secretary of the Air Force.

[§ 8209. Regular Air Force: commissioned officers on active list; special categories

[The authorized strenght of the Regular Air Force in commissioned officers on the active list in each of the categories of officers designated under section 8067 of this title is as prescribed by the Secretary of the Air Force.]

§ 8210. Regular Air Force strength in grade; general officers

(a) Subject to section 8202(a) of this title, the authorized strength of the Regular Air Force in general officers on the [active list] *active-duty list* is 75/10,000 of the authorized strength of the Regular Air Force in commissioned officers on the [active list] *active-duty list*. Of this authorized strength, not more than one-half may be in a regular grade above brigadier general.

(b) When the application of subsection (a) results in a fraction, a fraction of one-half or more is counted as one, and a fraction of less than one-half is disregarded.

(c) General officers on the [active list] *active-duty list* of the Regular Air Force who are specifically authorized by law to hold a civil office under the United States, or an instrumentality thereof, are not counted in determining authorized strength under this section.

[§ 8211. Regular Air Force: strength in grade; promotion-list officers

[(a) Subject to subsection (b), the authorized strength of the Regular Air Force in officers in each regular grade on each of the promotion lists authorized by section 8296 of this title shall be as prescribed by the Secretary of the Air Force. A vacancy in any grade on a promotion list may be filled by an authorized appointment in any lower grade.

[(b) Each strength prescribed by the Secretary under subsection (a) shall be stated as a percentage of the strength authorized for the particular list, and the schedule of percentages may be different for each list. No schedule for a list may authorize, with respect to a grade, a percentage that is higher than the sum of (1) the figure fixed for the grade according to the following table, and (2) the amounts, if any, by which the percentages fixed by the Secretary for higher grades are less than the figures fixed according to that table:

[*Grade*	*Column 1 Medical, dental, and veterinary officers, chaplains, and judge advocates*	*Column 2 All other promotion lists*
	Percent	*Percent*
[Colonel	[1] 8	[1] 8
[Lieutenant colonel	14	14
[Major	19	19
[Captain	23	23
[First lieutenant	36	18
[Second lieutenant	(2)—	18

[[1] Colonels whose retirement is deferred under section 8921(b) of this title are not included within this percentage.

[[2] None may be authorized by the Secretary for this category.]

§8212. [Regular Air Force;] Air Force Reserve; Air National Guard of United States: strength in grade; temporary increases

The authorized strength in any [regular or] reserve grade, as prescribed [by or] under this chapter, is automatically increased to the minimum extent necessary to give effect to each appointment made in that grade under section [541,] 1211(a), [8298, 8299,] 8365 (a) and (c), 8366 (a) and (d), 8375, 8376, 8380, *or* 8381[, or 9353,] of this title. An authorized strength so increased is increased for no other purpose, and while he holds that grade the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under those sections, may be made in that grade.

[§8213. Regular Air Force: warrant officers on active list

[The authorized strength of the Regular Air Force in warrant officers on the active list is 4,800

[§8214. Regular Air Force: enlisted members on active duty

[The authorized strength of the Regular Air Force in enlisted members on active duty, exclusive of officer candidates and aviation cadets, is 502,000 less the number of members of the Air Force on active duty who are neither enlisted members of the Regular Air Force nor members of the Air Force in the categories listed in section 8201(a)(1)–(6) of this title.

[§8215. Regular Air Force: female warrant officers on active list

[(a) The authorized strength of the Regular Air Force in female warrant officers on the active list is as prescribed by the Secretary of the Air Force.]

* * * * * * *

§ 8222. Air Force Reserve, exclusive of members on active duty

The authorized strength of the Air Force Reserve, exclusive of members who are included in the strength [of 502,000] authorized [in section 8201(a) of this title] for members of the Air Force on active duty is 500,000.

* * * * * * *

§ 8225. Air National Guard and Air National Guard of United States, exclusive of members on active duty

The authorized strength of the Air National Guard and the Air National Guard of the United States, exclusive of members who are included in the strength [of 502,000] authorized [in section 8201(a) of this title] for members of the Air Force on active duty, is 150,000. The strength authorized by this section shall be allocated among the States and Territories, Puerto Rico, the Canal Zone, and the District of Columbia.

[§ 8230. Personnel detailed outside Department of Defense

[Members of the Air Force who are detailed for duty with agencies of the United States outside the Department of Defense on a reimbursable basis are not counted in computing strengths under any law.]

CHAPTER 833—ENLISTMENTS

* * * * * * *

§ 8253. Air Force: persons not qualified

In time of peace, no person may be accepted for original enlistment in the Air Force unless he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the applicable provisions of [chapter 12 of title 8] *the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).*

* * * * * * *

§ 8257. Regular Air Force: aviation cadets; qualifications, grade, limitations

(a) The grade of aviation cadet is a special enlisted grade in the Regular Air Force.

(b) Any [male] citizen of the United States may be enlisted as an aviation cadet, if he is otherwise qualified.

(c) Any [male] enlisted member of the Regular Air Force who is otherwise qualified may be designated, with his consent, as an aviation cadet by the Secretary of the Air Force.

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CHAPTER 835—APPOINTMENTS IN THE REGULAR AIR FORCE

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[8284. Commissioned officers: appointment, how made.
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[8309. Commissioned officers: physical examination for promotion.]
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[8312. Officers: acceptance of promotion.
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[§ 8284. Commissioned officers: appointment, how made

[Appointments in commissioned grades in the Regular Air Force shall be made by the President, by and with the advice and consent of the Senate.

[§ 8285. Commissioned officers: original appointment; qualifications

[(a) To be eligible for original appointment in a commissioned grade in the Regular Air Force, except with a view to designation as a medical or dental officer, and except as provided in section 9353(b) of this title, a person must—

[(1) be a citizen of the United States;
[(2) be at least 21 years of age;
[(3) be of good moral character;
[(4) be physically qualified for active service; and
[(5) have such other qualifications as the Secretary of the Air Force may prescribe.

In addition, to be eligible for original appointment with a view to designation as an Air Force nurse, a person must be a graduate of a hospital or university school of nursing and a registered nurse.

[(b) The Secretary of the Air Force shall convene selection boards, to meet at times prescribed by him, to consider persons who are eligible for original appointment in the Regular Air Force other than with a view to designation as medical or dental officers, or as Air Force nurses or medical specialists. Each board shall be composed of at least five commissioned officers of the Regular Air Force. A recommendation for appointment may be made only by a majority of the total membership of the board.

[(c) The President may remove from the list of persons recommended by the board the name of any person who in his opinion is not qualified for appointment.

[(d) The name of each person credited with service under section 8287(a)(4) of this title who was appointed during the preceding calendar year, the grade in which appointed, and the justification therefor shall be reported before July 16 of each year, beginning in 1958, to the Committees on Armed Services of the Senate and House of Representatives.

[§ 8286. Commissioned officers: original appointment; age limitations

[(a) A person may not be originally appointed in a commissioned grade in the Regular Air Force, except with a view to designation as a medical or dental officer or as an Air Force nurse or medical specialist, if on the date of his appointment he has already passed his thirtieth birthday. However, the maximum age—

[(1) is increased by the period of active commissioned service in the armed forces performed after the appointee became 21 years of age and before his appointment; and

[(2) may be waived by the Secretary of the Air Force for any category in which, in his opinion, there are not enough officers with the required qualifications.

[(b) Notwithstanding subsection (a), a person may not be originally appointed in a commissioned grade in the Regular Air Force, except with a view to designation as a medical or dental officer or as an Air Force nurse or medical specialist, if he is above the age that would permit him to complete 20 years of active commissioned service in the armed forces before his fifty-fifth birthday.

[§ 8287. Commissioned officers: original appointment; service credit

[(a) For the purpose of determining grade, position on a promotion list, seniority in his grade in the Regular Air Force, and eligibility for promotion, a person originally appointed in a commissioned grade in the Regular Air Force, other than a person appointed with a view to designation as a medical or dental officer or as an Air Force nurse or medical specialist, shall be credited, at the time of his appointment—

[(1) with the active commissioned service in the armed forces that he performed after becoming 21 years of age and before his appointment;

[(2) three years, if he is appointed in the Regular Air Force with a view to designation as a chaplain, judge advocate, or veterinary officer;

[(3) under such regulations as the Secretary may prescribe, three years, if he is appointed in the Regular Air Force with a view to designation as a medical service officer and if he holds a degree of doctor of philosophy or a comparable degree in a science allied to medicine, so recognized by the Secretary;

[(4) under regulations to be prescribed by the Secretary; not more than eight years, if he is one of not more than 100 persons in any calendar year who are appointed from civil life or from Reserves of the Air Force who have qualifications not otherwise available from members of the Air Force on active duty; and

[(5) under regulations to be prescribed by the Secretary, not more than two years, if he is appointed while on active duty in the Air Force.

[(b) For the purposes set forth in subsection (a), a person originally appointed in a commissioned grade in the Regular Air Force with a view to designation as an Air Force nurse or medical specialist shall be credited, at the time of appointment, with all active commissioned service in the armed forces after December 6, 1941, performed after becoming 21 years of age and before appointment. However, not more than 14 years of service may be so credited. For the same purposes, a person who is originally appointed in the grade of first lieutenant under section 8288(b) of this title and who has not performed at least three years of active commissioned service in the armed forces after December 6, 1941, shall be credited with that amount of service.

[(c) Notwithstanding any other provision of law, a person who was a cadet at the United States Air Force Academy or the United States Military Academy, or a midshipman at the United States Naval Academy, may not be originally appointed in a commissioned grade in the Regular Air Force before the date on which his classmates at that academy are graduated and appointed as officers. A person who was a cadet or midshipman at, but was not graduated from, one of those academies may not be credited, upon original appointment as a commissioned officer of the Regular Air Force, with longer service than that credited to any member of his class at that academy whose service in the Air Force, or in the Army and the Air Force, has been continuous since graduation.

[(d) A graduate of the United States Air Force Academy, the United States Military Academy, or the United States Naval Academy who is originally appointed as a second lieutenant in the Regular Air Force is not entitled to any service credit under this section.

[§ 8288. Commissioned officers; original appointment; determination of grade

[(a) Except for a person appointed with a view to designation as a medical or dental officer or as an Air Force nurse or medical specialist, the commissioned grade in which a person is originally appointed in the Regular Air Force, based on the service credited under section 8287(a) of this title, is:

[(1) For persons with less than three years of service—second lieutenant.

[(2) For persons with at least three, but less than seven, years of service—first lieutenant.

[(3) for persons with at least seven, but less than 14 years of service—captain.

[(4) For persons with at least 14, but less than 21, years of service—major.

[(5) For persons with at least 21 years of service—lieutenant colonel.

[(b) Based on the service credited under section 8287(b) of this title, the commissioned grade in which an Air Force nurse or medical specialists is originally appointed in the Regular Air Force is:

[(1) For persons with less than three years of service who on the date of nomination have not passed their twenty-seventh birthday and who are not qualified under clause (2)—second lieutenant.

[(2) For persons with less than seven years of service who are qualified under regulations prescribed by the Secretary of the Air Force and who on the date of nomination have not passed their thirtieth birthday—first lieutenant.

[(3) For persons with at least seven years of service who on the date of nomination have not passed their thirty-ninth birthday—captain.

The maximum ages specified in clauses (1) and (2) of this subsection are increased by the period of active commissioned service which the member performed in the armed forces after December 6, 1941, but not by more than five years.

[§ 8289. Commissioned officers; medical officers: original appointment; professional examination

[No person may be originally appointed as a first lieutenant in the Regular Air Force with a view to designation as a medical officer, until he passes an examination of his professional fitness before an examining board composed of at least three medical officers designated by the Secretary of the Air Force.

[§ 8293. Commissioned officers; chaplains: original appointment; examination

[No person in civil life may be originally appointed in the Regular Air Force with a view to designation as a chaplain unless he has passed an examination prescribed by the President as to his moral, mental, and physical qualifications.

[§ 8294. Commissioned officers; medical and dental officers; original appointment

[(a) Original appointments in the Regular Air Force may be made in the grades of first lieutenant through colonel with a view to designation as medical or dental officers, as the needs of the Air Force require. These appointments may be made only from qualified doctors of medicine, osteopathy, or dentistry, as the case may be, who are citizens of the United States and who have such other qualifications as the Secretary of the Air Force may prescribe. In addition, to be eligible for appointment under this section with a view to designation as a medical officer, a doctor of osteopathy must—

[(1) be a graduate of a college of osteopathy whose graduates are eligible to be licensed to practice medicine or surgery in a majority of the States;

[(2) be licensed to practice medicine, surgery, or osteopathy in a State or Territory or in the District of Columbia;

[(3) under regulations to be prescribed by the Secretary of Defense, have completed a number of years of osteopathic and preosteopathic education equal to the number of years of medical and premedical education prescribed for persons entering recognized schools of medicine who become doctors of medicine and who would be qualified for appointment under this section in the grade for which that person is applying; and

[(4) have such other qualifications as the Secretary of the Air Force prescribes after considering the recommendation, if any, of the Surgeon General.

[(b) For the purposes of determining grade, position on a promotion list, seniority in his grade in the Regular Air Force, and eligibility for promotion, and officer appointed under subsection (a) shall be credited with the amount of service prescribed by the Secretary, but not less than four years. However, a doctor of medicine or osteopathy who has completed an internship of one year, or the equivalent may not be credited with less than five years.

[§ 8295. Commissioned officers: original appointment; determination of place on promotion list

[The name of each person who is originally appointed in a commissioned grade in the Regular Air Force and whose name is to be carried on a promotion list, other than a person appointed with a view to designation as a medical or dental officer or as an Air Force nurse or medical specialist, shall be placed on the applicable promotion list immediately below the junior officer of the same grade on that list who has the same or the next longer service credited to him under section 8287 of this title.

[§ 8296. Promotion lists: promotion-list officer defined; determination of place upon transfer or promotion

[(a) The names of all commissioned officers in grades below brigadier general on the active list of the Regular Air Force, except Air Force nurses, medical specialists, those in special categories otherwise excluded under law, and professors and the registrar of the United States Air Force Academy shall be carried on promotion lists in descending order of grade and rank in the Regular Air Force. Air Force nurses and medical specialists may be carried on promotion lists, but only on separate promotion lists maintained under subsection (b). Officers whose names are carried on a promotion list may be called "promotion-list officers".

[(b) A separate promotion list may be maintained for commissioned officers of the Regular Air Force in each of the following categories:

[(1) Chaplains.
[(2) Judge Advocates.
[(3) Medical officers.
[(4) Dental officers
[(5) Veterinary officers.
[(6) Medical service officers.
[(7) Air Force nurses.
[(8) Air Force medical specialists.
[(9) Any category established by the Secretary of the Air Force under section 8067(i) of this title.

[(c) The names of all regular officers, other than Air Force nurses and medical specialists, not on a list maintained under subsection (b) shall be carried on the Air Force promotion list.

[(d) If a promotion-list officer is transferred from one category to another whose officers are carried on a different promotion list, his name shall be placed upon the promotion list to which he is transferred among the officers of his grade in accordance with seniority as determined under section 8574(b) of this title.

[(e) Unless specifically provided otherwise, upon the promotion of a promotion-list officer, his name shall be placed at the foot of the list of officers of his grade.

[§ 8297. Selection boards

[(a) Under such regulations as he may prescribe, the Secretary of the Air Force shall detail selection boards, to meet at times prescribed by him, to recommend promotion-list officers and brigadier generals of the Regular Air Force for promotion in the Regular Air Force. Each board shall be composed of at least five officers of the Regular Air Force who hold a regular or temporary grade above lieutenant colonel, and who are senior in regular grade to, and who outrank, any officer considered by that board. However, a selection board considering—

> [(1) Under section 8300(a) or (b) of this title female promotion list officers others than those designated under section 8067 of this title, may include female promotion list officers who are not designated under that section, who are senior in regular grade, to and who outrank, any female officer being considered by that board; and
>
> [(2) Air Force nurses or medical specialists, may include Air Force nurses or medical specialists, as the case may be, in a temporary or regular grade above major.

[(b) No selection board may serve longer than one year and no member may serve on two consecutive boards for promotions to the same grade, if the second board considers any officer considered but not recommended for promotion by the first.

[(c) Each member of a selection board must swear that he will perform his duties without prejudice or partiality, having in view the special fitness of officers and the efficiency of the Air Force.

[(d) Except as otherwise provided by law, promotion-list officers and brigadier generals of the Regular Air Force may be promoted to the regular grades of captain through major general only when recommended by a selection board. A recommendation for promotion must be made by the majority of the total membership of the board. Notwithstanding any other provision of law, a board that is to recommend officers for promotion whom it considers to be the best qualified may recommend only those officers whom it also considers to be fully qualified.

[(e) Not later than 10 days after a board first meets, any officer eligible for consideration by that board is entitled to send a letter, through official channels, calling attention to matters of record in the Department of the Air Force concerning himself that he considers important. The letter may not contain any reflection upon the character, conduct, or motives of any officer, or criticism of any officer.

[§ 8298. Commissioned officers: promotion to first lieutenant; effect of failure of promotion

[(a) A promotion-list officer in the grade of second lieutenant shall be promoted to the regular grade of first lieutenant upon completing three years of service with which he is entitled to be credited for promotion. If a promotion-list officer in that grade is found to be not fully qualified, he shall be discharged under section 8814 of this title.

[(b) Vacancies in the grade of first lieutenant on a promotion list may be filled by promoting second lieutenants on that list with less than three years of service, in order of seniority, under regulations prescribed by the Secretary of the Air Force. This subsection does not apply to Air Force nurses or medical specialists.

[§ 8299. Commissioned officers: promotion to captain, major, or lieutenant colonel

[(a) Promotion-list officers shall be promoted to the regular grades of captain, major, and lieutenant colonel, under subsections (b) and (c), or eliminated from the active list under section 8303 of this title.

[(b) Without regard to vacancies, each promotion-list officer whose regular grade is first lieutenant, captain, or major shall be considered by a selection board for promotion to the next higher regular grade, far enough in advance of the date on which he will complete 7, 14, or 21 years of service with which he is entitled to be credited for promotion, as the case may be, that if recommended, he may be promoted on the date on which he will complete that service.

[(c) Having in view the number of actual and anticipated vacancies on a promotion list in the regular grade of captain, major, or lieutenant colonel, the Secretary of the Air Force may direct a selection board to consider and recommend officers on that list for promotion to the next higher regular grade without regard to length of service. However, no officer may be considered for promotion under this section more than two years before the date on which it is anticipated that he will be promoted if recommended, and unless the same board considers all officers above him on that list who are not on a recommended list.

[(d) The names of promotion-list officers recommended for promotion under this section and section 8301 of this title shall be carried on permanent recommended lists of their grade and promotion list in the same order among themselves as on the applicable promotion list, and they shall be promoted in that order. A promotion may be made whenever there is a vacancy, but it is not mandatory that the authorized numbers be maintained in any grade on any promotion list.

[(e) Whenever an officer is promoted under subsection (b), all officers in the same grade and on the same promotion list whose names are on the recommended list above that of the officer who must be promoted because of length of service shall be promoted at the same time and shall retain among themselves their existing seniority.

[(h) A promotion-list officer who has been twice considered and not recommended for promotion to any one regular grade may not again be considered for promotion under this section.

[§ 8300. Commissioned officers: promotion to captain, major, or lieutenant colonel; selection board procedure

[(a) When promotion-list officers in the regular grade of first lieutenant, captain, or major are to be considered, under section 8299 of this title, by a selection board for promotion to the next higher regular grade to fill existing or anticipated vacancies, the Secretary of the Air Force may direct the board to—

[(1) consider officers in the specified grade in the order of their seniority on the promotion list concerned;

[(2) recommend those who are fully qualified for promotion;

[(3) pass over those not so qualified; and

[(4) continue this procedure until the number of officers specified by him is recommended.

[(b) When a promotion-list officer in the regular grade of first lieutenant, captain, or major must be considered under section 8299 of this title for promotion because of length of service, or because he is on a promotion list above an officer who must be considered for that reason, the Secretary may—

[(1) furnish the board a list of officers to be considered for promotion to the grade concerned; and

[(2) direct the board to recommend the officers on that list whom it considers fully qualified for promotion.

[(c) Instead of the procedures set forth in subsection (a) or (b), the Secretary may furnish to the board a list of promotion-list officers to be considered and may direct it to recommend a number specified by him for promotion. The board shall recommend those officers whom it considers to be the best qualified. However, the number prescribed by the Secretary for recommendation must be at least 80 percent of those listed for consideration for the first time.

[§ 8301. Commissioned officers: promotion to captain, major, or lieutenant colonel; officers with special qualifications

[(a) In addition to the method prescribed in section 8300 of this title, whenever there are vacancies on the Air Force promotion list in the regular grade of captain, major, or lieutenant colonel, and the Secretary of the Air Force considers that there are or will be too few officers in any of those grades with special qualifications, he may direct a selection board to recommend a prescribed number of officers with those qualifications, for promotion to that grade, under the procedures prescribed in sections 8299 and 8300 of this title. However, an officer considered but not recommended under this section shall be treated as though he had not been considered for promotion within the meaning of section 8299 or 8303 of this title.

[§ 8302. Commissioned officers; medical, dental, and veterinary officers: promotion to captain, major, or lieutenant colonel; professional examination

[(a) No commissioned officer designated as a medical officer or veterinary officer whose regular grade is below lieutenant colonel may be promoted in the Regular Air Force until he passes an examination of his professional fitness before an examining board composed of three or more medical officers of the Regular Air Force selected by the Secretary of the Air Force. No commissioned officer designated as a dental officer whose regular grade is below lieutenant colonel may be promoted in the Regular Air Force until he passes an examination of his professional fitness before an examining board composed of one medical officer and two dental officers of the Regular Air Force, selected by the Secretary. The examination shall be prescribed by the Secretary and shall be held at such time before the right to promotion accrues as may be in the best interest of the Air Force.

[(b) If an officer designated as a medical, dental, or veterinary officer in the regular grade of first lieutenant or captain is found disqualified for promotion by the examining board, the Secretary shall detail a board of review to consider the findings of the examining board.

[(c) A board of review shall be composed in the same manner as an examining board, except that its members must be senior in rank to the officer examined, and must not have served on the examining board that examined him.

[(d) If the board of review concurs in the findings of the examining board, the officer shall be honorably discharged with one year's pay. If it does not concur in the findings, the officer shall be considered qualified and shall be promoted.

[(e) An officer designated as a medical, dental, or veterinary officer in the regular grade of major who fails his first examination for promotion shall be suspended from promotion and re-examined as soon as practicable after one year from the date of his first examination. While he is so suspended from promotion, his name shall be removed from the recommended list and the years of service with which he is entitled to be credited for promotion purposes shall be reduced, if necessary, as provided in section 8303(b) of this title.

[(f) If on reexamination such a major is found qualified, his name shall be restored to the recommended list and he is eligible for promotion. If he is found disqualified for promotion, he shall be treated in the manner provided for deferred officers under section 8303(d) of this title.

[(g) While an officer is suspended from promotion under subsection (e), his right to promotion passes successively to the officers below him who are in the same grade and on the same promotion list, and who are or may become eligible for promotion.

[(h) If the needs of the Air Force require that an officer entitled to promotion upon examination under subsection (a) be absent from a place where an examining board can be convened, the officer may be promoted, subject to examination as soon as practicable. However, if he is thereafter examined and found disqualified for that promotion, and if the proceedings are approved by the Secretary, he shall be treated as if he had been examined before promotion and had failed.

[(i) If an officer who is found qualified for promotion under this section dies in line of duty after the occurrence of a vacancy that would entitle him to that promotion because of his seniority and before promotion, the President may issue, or have issued, an appropriate commission in the name of that officer. A commission issued under this subsection shall issue as of the date of the vacancy, and the officer's name shall be carried on the records of the Department of the Air Force as if he has served in the grade in which posthumously commissioned, from the date of the vacancy to the date of his death. No person is entitled to any bonus, gratuity, pay, or allowance because of this subsection.

[§ 8303. Commissioned officers; effect of failure of promotion to captain, major, or lieutenant colonel

[(a) In this subtitle, "deferred officer" means a promotion-list officer considered for promotion to the grade of captain, major, or lieutenant colonel under section 8299 of this title, but not recommended for promotion.

[(b) The years of service with which a deferred officer is entitled to be credited for promotion purposes shall be reduced so that one year after the date on which he would have been promoted had he been recommended by a selection board he will not have more than 7, 14, or 21 years of service, if in the grade of first lieutenant, captain, or major, as the case may be.

[(c) A deferred officer shall be considered again by the next selection board considering officers of his grade and promotion list. If recommended by this board, his name shall be placed on the applicable recommended list with the other officers recommended by the board, in the same order among themselves as on the promotion list, but below officers placed on that list by an earlier board. If a deferred officer is promoted upon the recommendation of the next board considering officers of his grade, his first failure does not count as a failure of selection when he is thereafter considered for promotion to another regular grade.

[(d) A deferred officer who is not recommended by the next selection board considering officers of his grade and promotion list shall—

[(1) if he is eligible, be retired under section 8913 of this title;

[(2) if he is not eligible for retirement under section 8913 of this title, but is eligible for retirement under any other provision of law, be retired under that law on the date when he would have been retired under section 8913 of this title if he were eligible; or

[(3) if he is not eligible for retirement under section 8913 of this title or any other provision of law, be honorably discharged on such date as may be requested by him and approved under regulations to be prescribed by the Secretary of the Air Force, but not later than the first day of the seventh calendar month after the Secretary approves the report of that board, with severance pay computed by multiplying his years of service, but not more than 12, computed under section 8927(a) of this title, by two months' basic pay of the grade in which he is serving on the date of his discharge.

However, no person is entitled to severance pay under this section in an amount that is more than $15,000.

[(e) For the purposes of subsection (d)(3), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

[§ 8305. Commissioned officers: promotion to colonel

[(a) Having in view the number of actual and anticipated vacancies in any promotion list in the regular grade of colonel and the number of officers desired in that grade on that promotion list, the Secretary of the Air Force shall furnish to selection boards lists of officers in the regular grade of lieutenant colonel, in order of senority in regular grade, to be considered by those boards. The Secretary may not furnish the name of any officer to the board unless he furnishes to it the names of all officers above that officer on that promotion list who are not on a recommended list. He shall direct the boards to recommend a number prescribed by him for promotion to the grade of colonel. The list furnished may not contain the name of any officer who is on a recommended list for promotion to that grade. The board shall recommend the prescribed number of those officers whom it considers to be the best qualified.

[(b) Whenever the Secretary considers that there are or will be too few officers with special qualifications, in the grade of colonel on the Air Force promotion list, he may direct that a specified number of the officers to be recommended for promotion to the regular grade of colonel be officers with those qualifications.

[(c) The names of officers recommended for promotion to the regular grade of colonel shall be entered at the foot of, and carried on, the appropriate permanent recommended list for promotion to that grade in the same order among themselves as on the applicable promotion list. Officers shall be promoted in that order when there is a vacancy in that grade for that list. A vanancy in that grade may be filled at any time. It is not mandatory that the authorized numbers be maintained in the grade of colonel on any promotion list.

[(d) The ratio of the number of officers on any promotion list who are named for consideration for promotion to the regular grade of colonel, to the number directed to be recommended, may be prescribed by the Secretary.

[(e) No officer may be considered for promotion to the regular grade of colonel more than two years before the date on which it is anticipated that he will be promoted if selected.

[(f) An officer must complete at least one year of service in the regular grade of lieutenant colonel before being nominated for promotion to the Regular grade of colonel.

[§ 8306. Commissioned officers: promotion to brigadier general

[(a) Having in view the number of actual and anticipated vacancies in the regular grade of brigadier general and the number of officers desired in that grade, the Secretary of the Air Force shall furnish to selection boards lists of officers in the regular grade of colonel, in order of seniority in regular grade, to be considered by those boards. He shall direct the boards to recommend a number prescribed by him for promotion to the grade of brigadier general, but he need not direct the recommendation of a number sufficient to maintain the authorized number for that grade. The list furnished may not contain the name of any officer who is on a recommended list for promotion to that grade. The Secretary may further direct that a specified number of those recommended be officers with experience qualifying them for service in the categories to which officers may be designated under section 8067 of this title. The board shall recommend the prescribed number of those officers whom it considers to be best qualified.

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96–1462

DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

NOVEMBER 13, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. NICHOLS, from the Committee on Armed Services, submitted the following

REPORT

[To accompany S. 1918]

[Including cost estimate of the Congressional Budget Office]

The Committee on Armed Services to whom was referred the bill (S. 1918) to amend title 10, United States Code, to revise and make uniform the provisions of law relating to appointment, promotion, separation, and retirement of regular commissioned officers of the Army, Navy, Air Force, and Marine Corps, to establish the grade of commodore admiral in the Navy, to equalize the treatment of male and female commissioned officers, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill is a complete substitute therefor and appears in italic type in the reported bill.

The amendment to the title of the bill makes minor technical wording changes.

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[(b) The names of officers recommended for promotion to the regular grade of brigadier general shall be entered at the foot of, and carried on, the permanent recommended list for promotion to that grade, in the order to be determined by the Secretary.

[(c) If an officer is recommended for promotion to the regular grade of brigadier general and is not removed from the list by the President, he may be nominated and appointed as soon as a vacancy exists in the authorized number for that grade.

[(d) The ratio of the number of officers on any promotion list who are named for consideration for promotion to the regular grade of brigadier general, to the number directed to be recommended, may be prescribed by the Secretary.

[(e) No officer may be considered for promotion to the regular grade of brigadier general more than one year before the date on which it is anticipated that he will be promoted if recommended.

[(f) An officer must complete at least one year of service in the regular grade of colonel before being nominated for promotion to the regular grade of brigadier general.

[§ 8307. Commissioned officers: promotion to major general

[(a) Having in view the number of actual and anticipated vacancies in the regular grade of major general and the number of officers desired in that grade, the Secretary of the Air Force shall furnish to selection boards lists of officers in the regular grade of brigadier general, in order of seniority in regular grade, to be considered by those boards. He shall direct the boards to recommend a number prescribed by him for promotion to the grade of major general, but he need not direct the recommendation of a number sufficient to maintain the authorized number for that grade. The list furnished may not contain the name of any officer who is on a recommended list for promotion to that grade. The Secretary may further direct that a specified number of those recommended be officers with experience qualifying them for service in the categories to which offiers may be designated under section 8067 of this title. The board shall recommend the prescribed number of those officers whom is considers to be best qualified.

[(b) The names of officers recommended for promotion to the regular grade of major general shall be entered at the foot of, and carried on, th permanent recommended list for promotion to that grade, in the order to be determined by the Secretary.

[(c) If an officer is recommended for promotion to the regular grade of major general and is not removed from the list by the President, he may be nominated and appointed as soon as a vacancy exists in the authorized number for that grade.

[(d) The ratio of the number of officers on any promotion list who are named for consideration for promotion to the regular grade of major general, to the number directed to be recommended, may be prescribed by the Secretary.

[(e) No officer may be considered for promotion to the regular grade of major general more than one year before the date on which it is anticipated that he will be promoted if recommended.

[(f) An officer must complete at least one year of service in the regular grade of brigadier general before being nominated for promotion to the regular grade of major general.

[§ 8308. Commissioned officers: effect of removal from recommended list by President or failure of confirmation by Senate

[The President may remove from a recommended list for promotion to any grade the name of any promotion-list officer or brigadier general of the Regular Air Force who in his opinion is not qualified for promotion. If an officer's name is so removed, or if the Senate does not consent to his appointment, he continues to be eligible as if he had not been considered for promotion and may be recommended by the next selection board considering officers of his grade. If he is promoted on the recommendation of that board, he has the same date of rank and place on the promotion list that he would have had if he had been promoted as a result of his original selection. If the second board considers but does not recommend an officer who would be subject to elimination for second failure of selection for promotion to the grade concerned, or if he again fails of promotion because his name is removed from the recommended list by the President or because the Senate does not consent to his appointment, he shall be eliminated from the active list under section 8303 of this title.

[§ 8309. Commissioned officers: physical examination for promotion

[(a) The President may prescribe a system of physical examination for all commissioned officers of the Regular Air Force in grades below brigadier general to determine their fitness for promotion in the Regular Air Force. Each examination shall be given before the right to promotion accrues.

[(b) If the needs of the Air Force require that an officer entitled to promotion upon physical examination under subsection (a) be absent from a place where an examining board can be convened, the officer may be promoted subject to examination as soon as practicable. However, if he is thereafter examined and found physically disqualified for that promotion, and if the proceedings are approved by the Secretary of the Air Force, he shall be treated as if he had been examined before promotion and had failed.

[(c) If a commissioned officer fails to pass the physical examination and is reported unfit for promotion, the officer next below him on a recommended list for promotion who has passed the examination and is otherwise qualified shall be promoted.]

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[§ 8312. Officers: acceptance of promotion

[(a) An officer who is promoted in the Regular Air Force is considered to have accepted his promotion on the date of the order announcing it, unless he expressly declines the promotion. He is entitled to the pay and allowances of the higher grade from that date, unless entitled to them from an earlier date under another provision of law.

[(b) An officer need not take the oath of office upon promotion if his service since last taking it has been continuous.

[§ 8313. Suspension of laws for promotion or mandatory retirement or separation during war or emergency

[In time of war, or of emergency declared by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of commissioned officers of the Regular Air Force.

[§ 8314. Commissioned officers: promotion not to be delayed by another appointment

[The promotion to a higher regular grade of a commissioned officer of the Air Force who is on a recommended list awaiting promotion may not be withheld or delayed because of the original appointment of any other person to a commissioned grade in the Regular Air Force. This section does not apply to appointments of persons with a view to designation as medical or dental officers or Air Force nurses or medical specialists.]

CHAPTER 837—APPOINTMENTS AS RESERVE OFFICERS

Sec.
8351. Officers: Air National Guard of United States.
8352. Officers: Air Force Reserve: transfer from Air National Guard of United States.
8353. Commissioned officers: [appointment;] service credit *upon original appointment.*
8354. Commissioned officers: appointment of warrant officers and enlisted members of Air National Guard of United States; status.
8356. Commissioned officers: Air Force Reserve; aviation cadets: appointment; qualifications, grade.
8358. Commissioned officers: original appointment; service credit.
8359. Commissioned officers: original appointment; determination of grade.
8360. Commissioned officers: promotion service.
8361. Commissioned officers: seniority for promotion purposes.
8362. Commissioned officers: selection boards.
8363. Commissioned officers: selection boards, general procedure.
8365. Commissioned officers: promotion to first lieutenant.
8366. Commissioned officers: promotion to captain, major, or lieutenant colonel.
8367. Commissioned officers: promotion to captain, major, or lieutenant colonel; selection board procedure.
8368. Commissioned officers: effect of failure of promotion to captain, major, or lieutenant colonel.
8371. Commissioned officers: Air Force Reserve; promotion to colonel.
8372. Commissioned officers: Air Force Reserve; promotion; officers with special qualifications.
8373. Commissioned officers: Air Force Reserve; promotion to brigadier general and major general.
8374. Commissioned officers: promotion effective as of date of Federal recognition.
8375. Commissioned officers: brigadier general or major general; procedure on reassignment.
8376. Commissioned officers: promotion when serving in temporary grade higher than reserve grade.
8377. Commissioned officers: effect of removal from recommended list by President.
8378. Commissioned officers: promotion of officers removed from active status.
8379. Commissioned officers: appointment in Air National Guard; function of governor.
8380. Commissioned officers: status while serving on active duty after promotion.
8381. Commissioned officers: adjutants general and assistant adjutants general.
8392. Commissioned officers: reserve grade of adjutants general and assistant adjutants general.
8393. Commissioned officers: sea or foreign service not to be required for promotion.
8394. Officers: acceptance of promotion.

8395. During war.
8396. Exclusion of certain officers.

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§8353. Commissioned officers: **[appointment:]** service credit *upon original appointment*

[(a) For the purposes of chapters 837 and 863 of this title, a person who is appointed as a reserve commissioned officer of the Air Force, may be credited, upon his appointment, with service in an active status that reflects his combined years of experience and education and such other qualifications as the Secretary of the Air Force may by regulation prescribe.

[(b) A person covered by subsection (a) who is appointed with a view to assignment or designation in one of the following categories shall be credited, upon his appointment, and for the purposes of subsection (a), with at least the following service in an active status:

[(1) Medical officer—four years.
[(2) Dental officer—three years.
[(3) Veterinary officer—three years.
[(4) Chaplain—three years.
[(5) Judge Advocate—three years.

[(c) A person covered by subsection (a) who is appointed with a view to assignment or designation as a medical service officer, and who holds a degree of doctor of philosphy, or a comparable degree, in a science that the Secretary determines is allied to medicine may be credited upon his appointment, and for the purposes of subsection (a), with at least three years of service in an active status.

[(d) The Secretary shall report to the Committees on Armed Services of the Senate and House of Representatives by March 1 of each year on the number, categories, and grades of the reserve officers (other than medical or dental officers) originally appointed in the reserve grade of captain or above during the preceding calendar year.**]**

(a)(1) For the purpose of chapters 337 and 363 of this title and under regulations prescribed by the Secretary of Defense, a person receiving an original appointment as a reserve commissioned officer in the Air Force shall be credited at the time of such appointment with any service as a commissioned officer, except service as a commissioned warrant officer, that he performed in an active status in any armed force before such appointment.

(2) The Secretary of Defense shall prescribe regulations to authorize the Secretary of the Air Force to limit the amount of prior active commissioned service with which a person receiving an original appointment may be credited under paragraph (1), or to deny any such credit, in the case of a person who at the time of such appointment is credited with constructive service under subsection (b).

(b)(1) Under regulations prescribed by the Secretary of Defense, the Secretary of the Air Force shall credit a person who is receiving an original appointment as a reserve commissioned officer in the Air Force and who has advanced education or training or special experience with constructive service for such education, training, or experience as follows:

(A) One year for each year of advanced education beyond the baccalaureate degree level, for persons appointed in officer cate-

gories requiring such advanced education or an advanced degree as a prerequisite for appointment as a commissioned officer. (Except as provided in clause (E), in determining the years of constructive service under this clause, the Secretary of the Air Force shall grant credit for only the number of years normally required to complete the advanced education or receive the advanced degree.)

(B) Credit in the amount of any period of advanced education in a health profession (other than medicine and dentistry) beyond the baccalaureate degree level which exceeds the basic education criteria for appointment as an officer, if such advanced education will be directly used by the Air Force.

(C) Additional credit of (i) not more than one year for internship or equivalent graduate medical, dental, or other formal professional training required by the armed forces, and (ii) not more than one year for each additional year of such graduate-level training or experience creditable toward certification in a specialty required by the Air Force.

(D) Additional credit, in unusual cases, based on special experience in a particular field.

(E) Additional credit of one year for advanced education in a health profession if the number of years of baccalaureate education completed by 75 percent or more of the students entering advanced training in that health profession exceeds, by one or more, the minimum number of years of preprofessional education required by a majority of institutions which award degrees in that health profession. The percentage of such persons shall be computed on an annual basis for each health profession from the data for the year in which the person being appointed was admitted to a professional school. However, a person may not receive additional credit under this clause if the amount of his baccalaureate education does not exceed, by one or more, the minimum number of years of preprofessional education required by a majority of institutions which award degrees for that health profession, determined on the basis prescribed in the preceding sentence.

(F) Additional credit for experience as a physician or dentist, if appointed with a view to designation as a medical or dental officer.

(2) Except as authorized by the Secretary of the Air Force in individual cases and under regulations prescribed by the Secretary of Defense in the case of an officer appointed with a view to designation as a medical or dental officer, the amount of constructive service credited an officer under this subsection may not exceed the amount required in order for the officer to be eligible for an original appointment in the grade of major.

(3) Constructive service credited an officer under this subsection is in addition to any service credited that officer under subsection (a) and shall be credited at the time of the original appointment of the officer.

(c) Constructive service may not be credited under subsection (b) for education, training, or experience obtained while serving on active duty.

(d) If the Secretary of Defense determines that the number of qualified judge advocates serving on active duty in the Air Force in

grades below major is critically below the number needed by the Air Force in such grades, he may authorize the Secretary of the Air Force to credit any person receiving an original appointment in the Judge Advocate General's Corps with a period of constructive service in such an amount (in addition to any period of service credited such person under subsection (b)(1)) as will result in the grade of such person being that of captain and the date of rank of such person being junior to that of all other officers of the same grade serving on active duty.

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§ 8375. Commissioned officers; brigadier general or major general; procedure [or] *on* reassignment

(a) Within 30 days after an officer who was promoted to the reserve grade of brigadier general or major general under section 8373 or 8376 of this title ceases to occupy the position he was promoted to fill, he shall, unless he is assigned to a comparable position of the same or a higher grade, be treated as prescribed in clause (1), (2), or (3), as determined by the Secretary of the Air Force:

(1) Be transferred in grade to the inactive status list if he is qualified, or if he is qualified and applies therefor, be transferred to the Retired Reserve.

(2) Be discharged from his reserve appointment and, if he is qualified and applies therefor, be appointed in the reserve grade held by him before his appointment in a reserve general officer grade.

(3) If not transferred under clause (1) or appointed under clause (2), be discharged from his reserve appointment.

(b) An officer who is appointed under subsection (a)(2) shall be credited with an amount of service, computed under section 8360(e) of this title, in the grade in which appointed that is equal to the amount of service computed under that section with which he was credited in that grade and in any higher grade.

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§ 8396. Exclusion of officers on the active-duty list

The preceding sections of this chapter, except section 8353, do not apply to reserve officers on the active-duty list.

CHAPTER 839—TEMPORARY APPOINTMENTS

Sec.

[8441. General rule.
[8442. Commissioned officers; regular and reserve components: appointments in higher grade.
[8444. Commissioned officers: during war or emergency.
[8445. Officers: additional appointments during war or emergency.]
8446. Retention on active duty.
[8447. Appointments in commissioned grade: how made; how terminated.
[8448. Warrant officers: grades; appointment.
[8449. Warrant officers: promotion.
[8451. Officers: acceptance of appointment in higher grade.
[8452. Medical and dental officers: temporary promotion to captain.

[§ 8441. General rule

[Temporary appointments may be made only in the Air Force without specification of component.

[§ 8442. Commissioned officers; regular and reserve components: appointment in higher grade

[(a) Whenever the number of officers of the Regular Air Force in any regular grade above second lieutenant is less than the number authorized, the vacancies may be filled by the appointment of qualified officers, as prescribed in subsection (c).

[(b) Whenever, under authorization by Congress, the number of commissioned officers of the Regular Air Force on active duty plus the number of other commissioned officers of the Air Force ordered to active duty for a period of more than 30 days is more than the authorized strength of the Regular Air Force in commissioned officers on the active list, the Secretary of the Air Force shall determine the additional number of officers needed in each of the commissioned grades based upon the number of officers serving on active duty and the tasks being performed by the Air Force. Vacancies resulting from that determination may then be filled by the appointment of qualified officers, as prescribed in subsection (c).

[(c) Subject to subsections (a) and (b), regular commissioned officer, or a reserve commissioned officer who is serving on active duty, may be appointed in a temporary grade that is equal to or higher than his regular or reserve grade, without vacating any other grade held by him. Under regulations to be prescribed by the Secretary, appointments made under this subsection shall be made on a fair and equitable basis. Selections shall be based upon ability and efficiency with regard being given to seniority and age.

[§ 8444. Commissioned officers: during war or emergency

[(a) In time of emergency declared by Congress or the President, and in time of war, the President may appoint any qualified person, including a person who is not a Regular or Reserve, in any temporary commissioned grade.

[(b) An officer appointed under subsection (a) may be ordered to active duty for such period as the President prescribes.

[(c) Unless sooner vacated, an appointment under subsection (a) is effective during the war or emergency in which it is made and for six months thereafter.

[(d) For the purposes of determining grade, position on a promotion list, seniority in temporary grade, and eligibility for promotion, each medical or dental officer of the Air Force who is appointed in a temporary grade under subsection (a) with a view to designation as a medical or dental officer shall, when he enters on active duty, be credited with the constructive service authorized by section 8294(b) of this title.

[§ 8445. Officers: additional appointments during war or emergency

[(a) In addition to appointments authorized under section 8442 of this title, in time of war, or of national emergency declared by the President, a regular officer or a reserve warrant officer may be appointed in a temporary grade that is higher than his regular or reserve grade, without vacating that grade.

[(b) In addition to appointments authorized under subsection (a) of this section, and sections 8442 and 8444 of this title, in time of war a person who holds no commissioned grade in the Regular Air Force may be appointed in any temporary commissioned grade.

[(c) Unless sooner vacated, the appointment of an officer under subsection (b), except a member of the Regular Air Force, is effective during the war in which it is made and for six months thereafter.

[(d) Each officer appointed under subsection (b) shall, unless he is a member of the Regular Air Force, be relieved from active duty, at his request, within six months after the termination of the war.]

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[§ 8447. Appointments in commissioned grade: how made; how terminated

[(a) The appointment of a person under section 8442, 8444, or 8445 of this title shall be made without reference to any other appointment that he may hold in the Air Force.

[(b) Temporary appointments of commissioned officers in the Regular Air Force shall be made by the President alone in grades below lieutenant colonel and by the President, by and with the advice and consent of the Senate, in grades of lieutenant colonel and above. Temporary appointments of commissioned officers in the reserve components of the Air Force shall be made by the President alone in grades below lieutenant colonel and by the President, by and with the advice and consent of the Senate, in grades above major.

[(c) The President may vacate at any time a temporary appointment in a commissioned grade.

[§ 8448. Warrant officers: grades; appointment

[(a) The temporary warrant officer grades in the Air Force are those prescribed for regular warrant officers by section 555(a) of this title.

[(b) Whenever, under authorization by Congress, the number of commissioned officers of the Air Force on active duty is more than the authorized strength of the Regular Air Force in commissioned officers on the active list, the Secretary of the Air Force shall determine the additional number needed in each of the warrant officer grades based on the number of warrant officers serving on active duty and the tasks being performed by the Air Force. The Secretary may appoint, by warrant, qualified persons as warrant officers to fill the vacancies resulting from that determination. Appointments under this subsection continue in effect during the pleasure of the Secretary. While holding such an appointment, a warrant officer may be ordered to active duty with any unit of the Air Force.

[(c) A warrant officer appointed under subsection (b) is entitled—

[(1) to count all periods of active duty under the appointment as warrant or enlisted service for all purposes; and

[(2) to the benefits of all laws and regulations applicable to the retirement, pensions, and disability of members of the Air Force on active duty.

[§ 8449. Warrant officers: promotion

[Temporary promotions in warrant officer grades shall be governed by such regulations as the Secretary of the Air Force may prescribe.

[§ 8451. Officers: acceptance of appointment in higher grade

[(a) an officer who is promoted to a temporary grade is considered to have accepted his promotion on the date of the order announcing it, unless he expressly declines the promotion. He is entitled to the pay and allowances of the higher grade from that date, unless entitled to them from an earlier date under another provision of law.

[(b) An officer need not take the oath of office upon promotion if his service since last taking it has been continuous.

[§ 8452. Medical and dental officers: temporary promotion to captain

[Notwithstanding any other provision of law, a medical or dental officer may be promoted to the temporary grade of captain at any time after the first anniversary of the date upon which he graduated from a medical, osteopathic, or dental school, as the case may be.]

CHAPTER 841—ACTIVE DUTY

Sec.
8491. Non-regular officer: status.
[8494. Commissioned officers: grade in which ordered to active duty.]
8495. Air National Guard of United States: status.
8496. Air National Guard of United States: commissioned officers; duty in National Guard Bureau.
8497. Air National Guard of United States: members; status in which ordered into Federal service.
8498. Air National Guard of United States: mobilization; maintenance of organization.
8499. Air National Guard in Federal service: status.
8500. Air National Guard in Federal service: call.
8501. Air National Guard in Federal service: period of service; apportionment.
8502. Air National Guard in Federal service: physical examination.
8503. Retired commissioned officers: status.
[8504. Retired members.]

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[§ 8494. Commissioned officers: grade in which ordered to active duty

[A reserve commissioned officer who is ordered to active duty shall be ordered to that duty in his reserve grade unless the Secretary of the Air Force, in his discretion, orders him to active duty (other than for training) in a higher temporary grade. However, a reserve commissioned officer who is selected for participation in a program under which he will be ordered to active duty for at least one academic year at a civilian school or college may, upon his request, be ordered to that duty in a temporary grade that is lower than his reserve grade, without affecting his reserve grade.]

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[§ 8504. Retired members

[(a) The President may order any retired member of the Regular Air Force to active duty. He may assign a member ordered under this subsection to such duties as he considers necessary in the interest of national defense.]

CHAPTER 843—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.

[8531. Chief of Staff to President: appointment.]
8541. National Guard Bureau: assignment of officers of regular or reserve components.
8542. Chief and assistant chief of staff of wings of Air National Guard in Federal service: detail.
8543. Aides: detail; number authorized.
8547. Duties: chaplains; assistance required of commanding officers.
8548. Duties: warrant officers; limitations.
8549. Duties: female members; limitations.

[§ 8531. Chief of Staff to President: appointment

[The President, by and with the advice and consent of the Senate, may appoint a general officer of the Air Force as Chief of Staff to the President. Unless entitled to the rank, pay, and allowances of a grade above lieutenant general under another provision of law, an officer so appointed by and with the advice and consent of the Senate is entitled to the rank, pay, and allowances of a general, and is additional to the numbers otherwise authorized for that grade.]

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CHAPTER 845—RANK AND COMMAND

Sec.

[8571. Rank: commissioned officers on active duty.]
8572. Rank: commissioned officers serving under temporary appointments.
[8573. Rank: commissioned officers in regular grades of brigadier general and major general; seniority list.
[8574. Rank: commissioned officers in regular grades below brigadier general.]
8575. Rank: warrant officers.
8579. Command: commissioned officers in certain designated categories.
8581. Command: chaplains.
[8582. Command: retired officers.

[§ 8571. Rank: commissioned officers on active duty

[(a) Commissioned officers of the Air Force on active duty in the same grade rank among themselves according to date of rank. The date of rank—

[(1) for an officer of the Regular Air Force serving in his regular grade, is that stated in his commission or letter of appointment;

[(2) for an officer of the Regular Air Force serving in a temporary grade, is his date of appointment in that grade, unless adjusted under section 8572 of this title; and

[(3) for a reserve officer, precedes his date of entry on active duty by a period computed by adding—

[(A) the years of service after June 30, 1955, while in his current reserve grade or in any higher reserve grade, that are not credited to under section 1332(a)(2) of this title;

[(B) the days and months of any part of the year preceding his date of entry on active duty, while in his current reserve grade or in any higher reserve grade, that are not credited to him under clause (A), if under regulations to be prescribed by the Secretary of the Air Force, his service during that part of a year was satisfactory;

[(C) the periods of active service, while in his current reserve grade or in any higher reserve grade, that are not credited to him under clause (A) or (B);

[(D) the periods of service, while in his current reserve grade or in any higher reserve grade, that he has performed under section 502, 503, 504, or 505 of title 32, and that are not credited to him under clause (A) or (B); and

[(E) one day for each point for drill or equivalent instruction after June 30, 1955, while in his current reserve grade or in any higher reserve grade, that is credited to him under section 1332(a)(2)(B) of this title and not credited to him under clause (A) or (B).

[(b) When the dates of rank prescribed by subsection (a) are the same, rank is determined by adding all active commissioned service in the Air Force and the Army, all commissioned service under section 502, 503, 504, or 505 of title 32, and all service credited for points under section 1332(a)(2)(B) of this title.

[(c) When the dates of rank prescribed by subsection (a) and service computed under subsection (b) are the same:

[(1) Regular officers rank before reserve officers.

[(2) Regular officers rank among themselves according to sections 8573 and 8574 of this title.

[(3) Reserve officers rank among themselves according to age.]

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[§ 8573. Rank: commissioned officers in regular grades of brigadier general and major general; seniority list

[(a) The date of rank of an officer whose regular grade is brigadier general is the date of his appointment in that regular grade, if at the time of that appointment he held no temporary general officer grade. The date of rank of an officer whose regular grade is major general is the date of rank he held in the regular grade of brigadier general, if he held that grade at the time of his appointment in the regular grade of major general.

[(b) If at the time of his appointment in his current regular grade such an officer held only a temporary general officer grade, his date of rank is the date of rank he held in that temporary grade, except that if he was promoted to that temporary grade from the temporary grade of brigadier general his date of rank is the date of rank he held in the temporary grade of brigadier general.

[(c) Notwithstanding subsections (a) and (b), the date of rank of such an officer may not be earlier than that of the junior general officer in the same regular grade who was appointed to that grade before him.

[(d) The names of general officers of the Regular Air Force shall be carried on a seniority list in the order of seniority in both regular grade and date of rank as determined under subsection (a).

[§ 8574. Rank: commissioned officers in regular grades below brigadier general

[(a) Among commissioned officers of the same grade in the Regular Air Force who are on the same promotion list, rank in regular grade is determined by the order in which their names appear on that list.

[(b) Among commissioned officers of the same grade in the Regular Air Force who are not on the same promotion list or not on a promotion list, rank in regular grade is determined—

[(1) by date of rank;

[(2) if the dates of rank are the same, by length of continuous active commissioned service in the Regular Air Force;

[(3) if the dates of rank and length of continuous active commissioned service in the Regular Air Force are the same, by rank established at the time of original appointment in the Regular Air Force; and

[(4) in other cases, by the Secretary of the Air Force.

[(c) Rank among the graduates of each class at the United States Military Academy, United States Naval Academy, or United States Air Force Academy who, upon graduation, are appointed in the Regular Air Force shall be fixed under regulations to be prescribed by the Secretary.]

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§ 8579. Command: commissioned officers in certain designated categories

[(a) An officer designated as a medical, dental, veterinary, or medical service officer is not entitled to exercise command because of his rank, except within the categories prescribed in section 8067(a)-(d) of this title.

[(b) An Air Force nurse or medical specialist may exercise command only within his category, or over persons placed under his charge.]

An officer designated as a medical, dental, veterinary, medical service, biomedical sciences officer, or nurse is not entitled to exercise command because of rank, except within the categories prescribed in subsection (a), (b), (c), (d), (e), (f), or (i) of section 8067 of this title, or over persons placed under his charge.

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[§ 8582. Command: retired officers

[A retired officer has no right to command except when on active duty.]

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CHAPTER 849—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
[8632. Members of Air Force: forfeiture of pay during absence from duty due to disease from intemperate use of alcohol or drugs.
[8633. Commissioned officers: forfeiture of pay when dropped from rolls.]
8634. Air Force band: may not be paid for performance outside air base.
[8636. Enlisted members: pay and allowances not to accrue during suspended sentence of dishonorable discharge.]
8639. Enlisted members: officers not to use as servants.

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CHAPTER 853—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
8683. Service credit: certain service as a nurse, woman medical specialist, or civilian employee of Army Medical Department to be counted.
8684. Service credit: regular enlisted members; service as an officer to be counted as enlisted service.
8686. Members of Air National Guard of United States: credit for service as members of Air National Guard.
8687. Compensation: members of Air Force other than of Regular Air Force; when same as that provided for members of Regular Air Force.
[8689. Assignments and allotments of pay.]
8691. Flying officer rating: qualifications.

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[CHAPTER 859—SEPARATION FROM REGULAR AIR FORCE FOR SUBSTANDARD PERFORMANCE OF DUTY

[Sec.
[8781. Selection boards: composition; duties.
[8782. Boards of inquiry: composition; duties.
[8783. Boards of review: composition; duties.
[8784. Removal of officer: action by Secretary of the Air Force upon recommendation.
[8785. Rights and procedures.
[8786. Officer considered for removal: voluntary retirement or honorable discharge; severance benefits.
[8787. Officers eligible to serve on boards.

[§ 8781. Selection boards: composition; duties

[The Secretary of the Air Force may at any time convene a board of officers to review the record of any commissioned officer on the active list of the Regular Air Force to determine whether he shall be required, because his performance of duty has fallen below standards prescribed by the Secretary, to show cause for his retention on the active list.

[§ 8782. Boards of inquiry: composition; duties

[(a) Boards of inquiry, each composed of three or more officers, shall be convened, at such places as the Secretary of the Air Force may prescribe, to receive evidence and make findings and recommendations whether an officer, required to show cause under section 8781 of this title, shall be retained on the active list of the Regular Air Force.

[(b) A fair and impartial hearing before a board of inquiry shall be given to each officer so required to show cause for retention.

[(c) If a board of inquiry determines that the officer has failed to establish that he should be retained on the active list, it shall send the record of its proceedings to a board of review.

[(d) If a board of inquiry determines that the officer has established that he should be retained on the active list, his case is closed. However, at any time after one year from the date of that determination, he may be again required to show cause for retention under section 8781 of this title.

[§ 8783. Boards of review: composition; duties

[(a) Boards of review, each composed of three or more officers, shall be convened by the Secretary of the Air Force, at such times as he may prescribe, to review the records of cases of officiers recommended by boards of inquiry for removal from the active list of the Regular Air Force under section 8782 of this title.

[(b) If, after reviewing the record of the case, a board of review determines that the officer has failed to established that he should be retained on the active list, it shall send its recommendation to the Secretary for his action.

[(c) If, after reviewing the record of the case, a board of review determines that the officer has established that he should be retained on the active list, his case is closed. However, at any time after one year from the date of that determination, he may be again required to show cause for retention under section 8781 of this title.

[§ 8784. Removal of officer: action by Secretary of the Air Force upon recommendation

[The Secretary of the Air Force may remove an officer from the active list of the Regular Air Force if his removal is recommended by a board of review under this chapter. The Secretary's action in such a case is final and conclusive.

[§ 8785. Rights and procedures

[Each officer under consideration for removal from the active list of the Regular Air Force under this chapter shall be—

[(1) notified in writing, at least 30 days before the hearing of his case by a board of inquiry, that he is being required to show cause for retention on the active list;

[(2) allowed reasonable time, as determined by the board of inquiry under regulations of the Secretary of the Air Force, to prepare his defense;

[(3) allowed to appear in person and by counsel at proceedings before a board of inquiry; and

[(4) allowed full access to, and furnished copies of, records relevant to his case at all stages of the proceeding.

[§ 8786. Officer considered for removal: voluntary retirement or honorable discharge; severance benefits

[(a) At any time during proceedings under this chapter and before the removal of an officer from the active list of the Regular Air Force, the Secretary of the Air Force may grant his request—

[(1) for voluntary retirement, if he is otherwise qualified therefor; or

[(2) for honorable discharge with severance benefits under subsection (b).

[(b) Each officer removed from the active list of the Regular Air Force under this chapter shall—

[(1) if on the date of removal he is eligible for voluntary retirement under any law, be retired in the grade and with the pay for which he would be eligible if retired at his request; or

[(2) if on that date he is ineligible for voluntary retirement under any law, be honorably discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than 12, by one month's basic pay of that grade.

[(c) For the purposes of subsection (b)(2), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

[§ 8787. Officers eligible to serve on boards

[(a) No officer may serve on a board under this chapter unless he holds a regular or temporary grade above lieutenant colonel, and is senior in regular grade to, and outranks, any officer considered by that board.

[(b) No person may be a member of more than one board convened under this chapter for the same officer.

[CHAPTER 860—SEPARATION FROM REGULAR AIR FORCE FOR MORAL OR PROFESSIONAL DERELICTION OR IN INTERESTS OF NATIONAL SECURITY

[Sec.
[8791. Selection boards: composition; duties.
[8792. Boards of inquiry: composition; duties.
[8793. Boards of review: composition; duties.
[8794. Removal of officer: action by Secretary of the Air Force upon recommendation.
[8795. Rights and procedures.
[8796. Officers considered for removal: retirement or discharge.
[8797. Officers eligible to serve on boards.

[§ 8791. Selection boards: composition; duties

[The Secretary of the Air Force may at any time convene a board of general officers to review the record of any commissioned officer on the active list of the Regular Air Force to determine whether he shall be required, because of moral dereliction, professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on the active list.

[§ 8792. Boards of inquiry: composition; duties

[(a) Boards of inquiry, each composed of three or more general officers, shall be convened at such places as the Secretary of the Air Force may prescribe, to receive evidence and make findings and recommendations whether an officer, required to show cause under section 8791 of this title, shall be retained on the active list of the Regular Air Force.

[(b) A fair and impartial hearing before a board of inquiry shall be given to each officer so required to show cause for retention.

[(c) If a board of inquiry determines that the officer has failed to establish that he should be retained on the active list, it shall send the record of its proceedings to a board of review.

[(d) If a board of inquiry determines that the officer has established that he should be retained on the active list, his case is closed. However, at any future time, he may be again required to show cause for retention under section 8791 of this title.

[§ 8793. Boards of reviews: composition; duties

[(a) Boards of review, each composed of three or more general officers, shall be convened by the Secretary of the Air Force, at such times as he may prescribe to review the records of cases of officers recommended by boards of inquiry for removal from the active list of the Regular Air Force under section 8792 of this title.

[(b) If, after reviewing the record of the case, a board of review determines that the officer has failed to establish that he should be retained on the active list, it shall send its recommendation to the Secretary for his action.

[(c) If, after reviewing the record of the case, a board of review determines that the officer has established that he should be retained on the active list, his case is closed. However, at any future time, he may be again required to show cause for retention under section 8791 of this title.

[§ 8794. Removal of officer: action by Secretary of the Air Force upon recommendation

[The Secretary of the Air Force may remove an officer from the active list of the Regular Air Force if his removal is recommended by a board of review under this chapter. The Secretary's action in such a case is final and conclusive.

[§ 8795. Rights and procedures

[Each officer under consideration for removal from the active list of the Regular Air Force under this chapter shall be—

[(1) notified in writing of the charges against him, at least 30 days before the hearing of his case by a board of inquiry, for which he is being required to show cause for retention on the active list;

[(2) allowed reasonable time, as determined by the board of inquiry under regulations of the Secretary of the Air Force, to prepare his defense;

[(3) allowed to appear in person and by counsel at proceedings before a board of inquiry; and

[(4) allowed full access to, and furnished copies of, records relevant to his case at all stages of the proceeding, except that a board shall withhold any records that the Secretary determines should be withheld in the interest of national security. In any case where any records are withheld under clause (4), the officer whose case is under consideration shall, to the extent that the national security permits, be furnished a summary of the records so withheld.

[§ 8796. Officers considered for removal: retirement or discharge

[(a) At any time during proceedings under this chapter and before the removal of an officer from the active list of the Regular Air Force the Secretary of the Air Force may grant his request—

[(1) for voluntary retirement, if he is otherwise qualified therefor; or

[(2) for discharge under subsection (b).

[(b) Each officer removed from the active list of the Regular Air Force under this chapter shall—

[(1) if on the date of removal he is eligible for voluntary retirement under any law, be retired in the grade and with the pay for which he would be eligible if retired at his request; or

[(2) if on that date he is ineligible for voluntary retirement under any law, be discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than 12, by one month's basic pay of that grade.

[(c) For the purposes of subsection (b)(2), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

[§ 8797. Officers eligible to serve on boards

[(a) No officer may serve on a board under this chapter unless he is senior in regular grade to, and outranks, any officer considered by that board.

[(b) No person may be a member of more than one board convened under this chapter for the same officer.]

CHAPTER 861—SEPARATION FOR VARIOUS REASONS

Sec.
[8814. Regular commissioned officers: discharge during three-year probationary period.]
8817. Aviation cadets: discharge.
[8818. Regular female members: termination of appointment or enlistment.]
8819. Reserve officers: discharge for failure of promotion to first lieutenant.
8820. Air National Guard of United States officers: discharge.

[§ 8814. Regular commissioned officers: discharge during three-year probationary period

[The Secretary of the Air Force may discharge a regular commissioned officer of the Air Force who has less than three years of continuous service as a commissioned officer therein. However, such an officer may not be discharged because of his marriage, unless the marriage occurred within one year after the date of his original appointment.]

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[§ 8818. Regular female members: termination of appointment or enlistment

[The Secretary of the Air Force, under regulations prescribed by the President, may terminate the appointment or enlistment of any female member of the Regular Air Force. However, the appointment of a commissioned officer may not be terminated under this section by dismissal.]

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CHAPTER 863—SEPARATION OR TRANSFER TO RETIRED RESERVE

Sec.

8843. Age 60: reserve officers below major general except those covered by section 8845 of this title.
8844. Age 62: reserve major generals, except those covered by section 8845 of this title.
8845. Age 64: Chief of National Guard Bureau; adjutants general.
8846. Deferred officers.
8848. Twenty-eight years: reserve first lieutenants, captains, majors, and lieutenant colonels.
8850. Thirty years or more: reserve commissioned officers; excessive number.
8851. Thirty years or five years in grade: reserve colonels and brigadier generals.
8852. Thirty-five years or [more] *five years* in grade: reserve major generals.
8853. Computation of years of service.
8855. Retention in active status of certain officers until age 60.

* * * * * * *

§ 8848. Twenty-eight years: reserve first lieutenants, captains, majors, and lieutenant colonels

(a) * * *

* * * * * * *

(c) Notwithstanding subsections (a) and (b) of this section, the Secretary of the Air Force may authorize the retention in an active status until age 60 of any officer of the Air National Guard of the United States who would otherwise be removed from an active status under this section and who is employed as a technician under section 709 of title 32[, United States Code,] in a position for which Air National Guard membership is prescribed by the Secretary.

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§ 8851. Thirty years or five years in grade: reserve colonels and brigadier generals

(a) * * *

* * * * * * *

(c) Notwithstanding subsections (a) and (b) of this section, the Secretary of the Air Force may authorize the retention in an active status until age 60 of any officer of the Air National Guard of the United States who would otherwise be removed from an active status under this section and who is employed as a technician under section 709 of title 32[, United States Code,] in a position for which Air National Guard membership is prescribed by the Secretary.

* * * * * * *

§ 8855. Retention in active status of certain officers until age 60

Notwithstanding any other section of this chapter except section 8846, the Secretary of the Air Force may, with the officer's consent, retain in an active status any reserve officer of the Air Force who is designated as a medical officer, dental officer, veterinary officer, *optometrist, podiatrist,* chaplain, Air Force nurse, or [Air Force medical specialist] *biomedical sciences officer,* but not later than the date upon which he becomes 60 years of age. *An officer may be retained in an active status under the authority of this section only to fill a mission-based requirement.*

[CHAPTER 865—RETIREMENT FOR AGE

[Sec.
[8883. Age 60: regular commissioned officers below major general.
[8884. Age 60: regular major generals whose retirement has been deferred.
[8885. Age 62: regular major generals.
[8886. Age 64: regular major generals whose retirement has been deferred.
[8888. Computation of years of service: mandatory retirement; regular commissioned officers.
[8889. Computation of retired pay: law applicable.

[§ 8883. Age 60: regular commissioned officers below major general

[Unless retired or separated at an earlier date, each commissioned officer whose Regular grade is below major general, other than a professor or the registrar of the United States Air Force Academy, shall be retired when he becomes 60 years of age, except as provided by section 8301 of title 5.

[§ 8884. Age 60: regular major generals whose retirement has been deferred

[Unless retired or separated at an earlier date, each commissioned officer whose regular grade is major general, and whose retirement under section 8923 of this title has been deferred under clause (1) of that section, shall be retired when he becomes 60 years of age, except as provided by section 8301 of title 5.

[§ 8885. Age 62: regular major generals

[Unless retired or separated at an earlier date or unless retained under section 8923(2) of this title, each commissioned officer whose regular grade is major general shall be retired when he becomes 62 years of age, except as provided by section 8301 of title 5.

[§ 8886. Age 64: regular major generals whose retirement has been deferred

[Unless retired or separated at an earlier date, each commissioned officer whose regular grade is major general, and whose retirement under section 8923 of this title has been deferred under clause (2) of that section, and each permanent professor and the registrar of the United States Air Force Academy, shall be retired when he becomes 64 years of age, except as provided by section 8301 of title 5.

[§ 8888. Computation of years of service: mandatory retirement; regular commissioned officers

[For the purpose of computing the retired pay of a commissioned officer of the Regular Air Force retired under section 8883, 8884, 8885, or 8886 of this title, his years of service are the greater of—

[(1) the years of service that may be credited to him under section 1405 of this title; or

[(2) his years of service computed under clause (A), (B), (C), (D), (E), (F), (G), or (H), whichever applies:

[(A) For an officer of the Regular Air Force appointed in the Regular Army or the Regular Air Force before January 1, 1948, under the Act of December 28, 1945, ch. 601 (59 Stat. 663), the sum of—

[(i) the years of service credited to him under that Act at the time of his appointment;

[(ii) his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment; and

[(iii) the years of service credited to him under section 27 of the Act enacting this amended section.

[(B) For an officer appointed in the Regular Air Force under section 308 of the Women's Armed Services Integration Act of 1948 (62 Stat. 373), the sum of—

[(i) the years of service credited to her under that section at the time of her appointment;

[(ii) her years of active commissioned service in the Regular Air Force after that appointment;

[(iii) the years of service credited to her under section 27 of the Act enacting this amended section.

[(C) For a reserve judge advocate appointed in the Regular Army in the grade of captain in the Judge Advocate General's Department under section 24e of the National Defense Act, as amended (53 Stat. 558)—

[(i) his years of active commissioned service in the Army after becoming 21 years of age, after December 7, 1941, and before the date of that appointment; or

[(ii) the number of days, months, and years by which his age at the time of that appointment exceeded 25 years;

whichever is greater, plus his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment, and the years of service credited to him under section 27 of the Act enacting this amended section.

[(D) For an Air Force nurse or medical specialist, the period of service credited under the Army-Navy Nurses Act of 1947, as amended, or credited under section 8287(b) of this title at the time of appointment, plus the years of active commissioned service in the Regular Air Force after appointment in the Regular Air Force.

[(E) For an officer of the Regular Air Force appointed in the Regular Army or the Regular Air Force before December 31, 1947, other than an officer covered by clause (A), (C), or (D), the sum of—

[(i) his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment;

[(ii) his years of active commissioned service in the Army and the Air Force after becoming 21 years of age and after December 7, 1941, under any earlier appointment; and

[(iii) the years of service credited to him under section 27 of the Act enacting this amended section.

[(F) For an officer of the Regular Air Force appointed in the Regular Army or the Regular Air Force after December 31, 1947, under section 506 of the Officer Personnel Act of 1947 (61 Stat. 890), the sum of—

[(i) his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment;

[(ii) his years of active commissioned service in the armed forces after becoming 21 years of age and after December 6, 1941, under any earlier appointment; and

[(iii) the years of service credited to him under section 27 of the Act enacting this amended section.

[(G) For an officer of the Regular Air Force who was appointed in the Regular Army or the Regular Air Force after December 31, 1947, other than an officer covered by clause (B), (D), (F), or (H), the sum of—

[(i) his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment;

[(ii) his years of active commissioned service in the Army and the Air Force after December 31, 1947, under any earlier appointment; and

[(iii) the years of service credited to him under section 27 of the Act enacting this amended section.

[(H) for an officer of the Regular Air Force who was appointed in the Regular Air Force after July 19, 1956, other than an officer who is covered by clause (D) or (F) or who is designated as a medical or dental officer, the sum of—

[(i) his years of active commissioned service in the Regular Air Force after that appointment;

[(ii) his years of active commissioned service in the armed forces after becoming 21 years of age and before that appointment; and

[(iii) the years of service credited to him under section 8287(a)(3), (4), or (5) of this title.

[§ 8889. Computation of retired pay: law applicable

[A member of the Air Force retired under this chapter is entitled to retired pay computed under chapter 871 of this title.]

CHAPTER 867—RETIREMENT FOR LENGTH OF SERVICE

Sec.
8911. Twenty years or more: regular or reserve commissioned officers.
[8913. Twenty years or more: deferred officers not recommended for promotion.]
8914. Twenty to thirty years: enlisted members.
[8915. Twenty-eight years: deferred retirement of nurses and medical specialists in regular grade of major.

[8916. Twenty-eight years: promotion-list lieutenant colonels.]
8917. Thirty years or more: regular enlisted members.
8918. Thirty years or more: regular commissioned officers.
[8919. Thirty years or more: regular commissioned officers; excessive number.]
8920. More than thirty years: professors of the United States Air Force Academy.
[8921. Thirty years or five years in grade: promotion-list colonels.
[8922. Thirty years or five years in grade: regular brigadier generals.
[8923. Thirty-five years or five years in grade: regular major generals.]
8924. Forty years or more: Air Force officers.
8925. Computation of years of service: voluntary retirement; enlisted members.
8926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers.
[8927. Computation of years of service: mandatory retirement; regular commissioned officers.]
8929. Computation of retired pay: law applicable.

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[§ 8913. Twenty years or more: deferred officers not recommended for promotion

[(a) A deferred officer who is not recommended for promotion under section 8303(c) of this title, or an officer who is found disqualified for promotion under section 8302(f) of this title, shall, if he has at least 20 years of service computed under section 8927(a) of this title, be retired, except as provided by section 8301 of title 5, on such date as may be requested by him and approved under regulations to be prescribed by the Secretary of the Air Force, but not later than the first day of the seventh calendar month after the Secretary approves the report of the last board that did not recommend him for promotion to the grade concerned.

[(b) Unless sooner retired or separated under another provision of law, a deferred officer who is not recommended for promotion under section 8303(c) of this title, or an officer found disqualified for promotion under section 8302(f) of this title, who is not eligible for retirement under subsection (a) of this section or any other provision of law, but is within two years of becoming entitled to retirement under subsection (a) or some other provision of law, shall be retained on the active list in his regular grade until the date he completes 20 years of service computed under section 8927(a) of this title, or the first day of the seventh calendar month after the Secretary approves the report of the last board that did not recommend him for promotion to the grade concerned, whichever is later, and then retired.]

* * * * * * *

[§ 8915. Twenty-eight years: deferred retirement of nurses and medical specialists in regular grade of major

[The Secretary of the Air Force may defer the retirement of any Air Force nurse or medical specialist in the regular grade of major until the thirtieth day after the officer completes twenty-eight years of service computed under section 8927(a) of this title.

[§ 8916. Twenty-eight years: promotion-list lieutenant colonels

[(a) Unless retired or separated at an earlier date, each promotion-list officer in the regular grade of lieutenant colonel shall be retired, except as provided by section 8301 of title 5, on the thirtieth day after he completes 28 years of service computed under section 8927(a) of this title. However, if his name is carried on the list of officers recommended for appointment to the regular grade of colonel, he shall be retained on the active list while his name is so carried.

[(b) The Secretary of the Air Force may defer the retirement under this section of any promotion list officer in the regular grade of lieutenant colonel who is a medical, dental, veterinary, or medical service officer, a medical specialist, or a chaplain, but not later than the date on which he becomes sixty years of age.]

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[§ 8919. Thirty years or more: regular commissioned officers; excessive number

[Whenever the Secretary of the Air Force believes that there are too many commissioned officers on the active list of the Regular Air Force, in any grade, who have at least 30 years of service computed under section 8927(a) of this title, he may convene a board of at least five general officers of the Regular Air Force. The Board shall consider all officers on the active list in that grade and with that service, and shall recommend officers by name for retirement, in the number specified by the Secretary. The Secretary may retire an officer so recommended.]

* * * * * * *

[§ 8921. Thirty years or five years in grade: promotion list colonels

[(a) Unless retired or separated at an earlier date, each promotion-list officer in the regular grade of colonel shall be retired, except as provided by section 8301 of title 5, on the fifth anniversary of the date of his appointment in that regular grade or on the thirtieth day after he completes 30 years of service computed under section 8927(a) of this title, whichever is later. However, if his name is carried on the list of officers recommended for appointment to the regular grade of brigadier general, he shall be retained on the active list while his name is so carried.

[(b) The Secretary of the Air Force may defer the retirement under this section of any promotion-list officer in the regular grade of colonel who is a medical, dental, veterinary, or medical service officer, or a chaplain, but not later than the date on which he becomes 60 years of age. The number of deferments in effect under this subsection for any one promotion list at any one time may not be more than 10 percent of the number of colonels authorized for that list.

[§ 8922. Thirty years or five years in grade: regular brigadier generals

[(a) Unless retired or separated at an earlier date, each officer in the regular grade of brigadier general, other than a professor of the United States Air Force Academy, shall be retired, except as provided by section 8301 of title 5, on the fifth anniversary of the date of his appointment in that regular grade, or on the thirtieth day after he completes 30 years of service computed under section 8927(a) of this title, whichever is later. However, if his name is carried on the list of officers recommended for appointment to the regular grade of major general, he shall be retained on the active list while his name is so carried.

[(b) The Secretary of the Air Force may defer the retirement under this section of any brigadier general who is serving in a higher temporary grade, but not later than the date on which he becomes 60 years of age. Not more than five deferments under this subsection may be in effect at any one time.

[§ 8923. Thirty-five years or five years in grade: regular major generals

[Unless retired or separated at an earlier date, each officer in the regular grade of major general shall be retired, except as provided by section 8301 of title 5, on the fifth anniversary of the date of his appointment in that regular grade, or on the thirtieth day after he completes 35 years of service computed under section 8927(a) of this title, whichever is later. However, the Secretary of the Air Force may defer the retirement under this section of—

[(1) any such major general, but not later than the date on which he becomes 60 years of age; and

[(2) any such major general who is serving in a temporary grade above major general, or who is serving in a position that carries a grade above major general, but not later than the date on which he becomes 64 years of age; and not more than five deferments under this clause may be in effect at any one time.]

§ 8924. Forty years or more: Air Force officers

(a) Except as provided in section [8786] *1186* of this title, a commissioned officer of the Air Force who has at least 40 years of service computed under section 8926 of this title shall be retired upon his request.

(b) Any warrant officer of the Air Force who has at least 40 years of service computed under section 8926(a) of this title shall be retired upon his request.

* * * * * * *

[§ 8927. Computation of years of service: mandatory retirement; regular commissioned officers

[(a) For the purpose of determining whether a regular commissioned officer may be retired under section 8913, 8915, 8916, 8919, 8921, 8922, or 8923 of this title, his years of service are as follows:

[(1) For an officer of the Regular Air Force appointed in the Regular Army or the Regular Air Force before January 1, 1948, under the Act of December 28, 1945, ch. 601 (59 Stat. 663), the sum of—

[(A) the years of service credited to him under that Act at the time of his appointment;

[(B) his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment; and

[(C) the years of service credited to him under section 27 of the Act enacting this amended section.

[(2) For an officer appointed in the Regular Air Force under section 308 of the Women's Armed Services Integration Act of 1948 (62 Stat. 373), the sum of—

[(A) the years of service credited to her under that section at the time of her appointment;

[(B) her years of active commissioned service in the Regular Air Force after that appointment; and

[(C) the years of service credited to her under section 27 of the Act enacting this amended section.

[(3) For a reserve judge advocate appointed in the Regular Army in the grade of captain in the Judge Advocate General's Department under section 24e of the National Defense Act, as amended (53 Stat. 558)—

[(A) his years of active commissioned service in the Army after becoming 21 years of age, after December 7, 1941, and before the date of that appointment; or

[(B) the number of days, months, and years by which his age at the time of that appointment exceeded 25 years;

whichever is greater, plus his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment, and the years of service credited to him under section 27 of the Act enacting this amended section.

[(4) For an Air Force nurse or medical specialist, the period of service credited under the Army-Navy Nurses Act of 1947, as amended, or credited under section 8287(b) of this title at the time of appointment, plus the years of active commissioned service in the Regular Air Force after appointment in the Regular Air Force.

[(5) For an officer of the Regular Air Force appointed in the Regular Army or the Regular Air Force before December 31, 1947, other than an officer covered by clause (1), (3), or (4), the sum of—

[(A) his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment;

[(B) his years of active commissioned service in the Army and the Air Force after becoming 21 years of age and after December 7, 1941, under any earlier appointment; and

[(C) the years of service credited to him under section 27 of the Act enacting this amended section.

[(6) For an officer of the Regular Air Force appointed in the Regular Army or the Regular Air Force after December 31, 1947, under section 506 of the Officer Personnel Act of 1947 (61 Stat. 890), the sum of—

[(A) his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment;

[(B) his years of active commissioned service in the armed forces after becoming 21 years of age and after December 6, 1941, under any earlier appointment; and

[(C) the years of service credited to him under section 27 of the Act enacting this amended section.

[(7) For an officer of the Regular Air Force who was appointed in the Regular Army or the Regular Air Force after

December 31, 1947, other than an officer covered by clause (2), (4), (6), or (8), the sum of—

[(A) his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment;

[(B) his years of active commissioned service in the Army and the Air Force after becoming 21 years of age and after December 31, 1947, under any earlier appointment; and

[(C) the years of service credited to him under section 27 of the Act enacting this amended section.

[(8) For an officer of the Regular Air Force who was appointed in the Regular Air Force after July 19, 1956, other than an officer who is covered by clause (4) or (6) or who is designated as a medical or dental officer, the sum of—

[(A) his years of active commissioned service in the Regular Air Force after that appointment;

[(B) his years of active commissioned service in the armed forces after becoming 21 years of age and before that appointment; and

[(C) the years of service credited to him under section 8287(a)(3), (4), or (5) of this title.

[(b) For the purpose of computing the retired pay of a commissioned officer of the Regular Air Force retired under section 8913, 8915, 8916, 8919, 8921, 8922, or 8923 of this title, his years of service are the greater of—

[(1) the years of service that may be credited to him under section 1405 of this title; or

[(2) his years of service computed under clause (1), (2), (3), (4), (5), (6), (7), or (8) of subsection (a), whichever is applicable.]

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CHAPTER 869—RETIRED GRADE

Sec.

8961. General rule.
8962. Higher grade for service in special positions.
8963. Higher grade for service during certain periods: regular and reserve commissioned officers.
8964. Higher grade after 30 years of service: Air Force warrant officers; regular enlisted members.
8965. Restoration to former grade: Regular Air Force warrant officers and enlisted members.
8966. Retired lists.

§ 8961. General rule

[Unless entitled to a higher retired grade under some other provision of law, a Regular or Reserve of the Air Force who retires other than for physical disability retires in the regular or reserve grade that he holds on the date of his retirement.]

(a) Unless entitled to a higher retired grade under some other provision of law, a regular commissioned officer of the Air Force who retires other than for physical disability, and a reserve commissioned officer of the Air Force who retires other than for physical disability or for nonregular service under chapter 67 of this title, retires in the grade determined under section 1370 of this title.

(b) Unless entitled to a higher retired grade under some other provision of law, a Regular or Reserve of the Air Force not covered by subsection (a) who retires other than for physical disability retires in the regular or reserve grade that he holds on the date of his retirement.

§ 8962. Higher grade for service in special positions

(a) Upon retirement, a commissioned officer of the Air Force who has served (1) as Chief of Staff to the President, (2) as Chief of Staff of the Air Force, (3) as a senior member of the Military Staff Committee of the United Nations. **[**(4) in a position of importance and responsibility designated by the President to carry the grade of general or lieutenant general under section 8066 of this title, or (5)**]** *or (4)* as Surgeon General of the Air Force in the grade of lieutenant general may, in the discretion of the President, be retired, by and with the advice and consent of the Senate, in the highest grade in which he served on active duty.

(b) Upon retirement, any permanent professor of the United States Air Force Academy whose grade is below brigadier general, and whose service as such a professor has been long and distinguished, may, in the discretion of the President, be retired in the grade of brigadier general.

§ 8963. Higher grade for service during certain periods: regular and reserve commissioned officers

[(a) A regular commissioned officer who is retired, or a reserve commissioned officer who is retired or to whom retired pay is granted, is entitled to a retired grade equal to the highest temporary grade in which he served on active duty satisfactorily, as determined by the Secretary of the Air Force, for not less than six months.**]**

[(b)**]** Upon retirement, an Air Force nurse or medical specialist who was (1) a member of the Army Nurse Corps established by the Act of July 9, 1918, ch. 143 (40 Stat. 879), (2) a dietitian or physical therapist appointed in the Army under the Act of December 22, 1942, ch. 805 (56 Stat. 1072), or (3) an officer appointed in the Army under the Act of June 22, 1944, ch. 272 (58 Stat. 324), is entitled to a retired grade equal to the highest grade or relative rank in which she served on active duty satisfactorily, as determined by the Secretary, after September 8, 1940, and before July 1, 1946.

* * * * * * *

CHAPTER 871—COMPUTATION OF RETIRED PAY

Sec.

8991. Computation of retired pay.
8992. Recomputation of retired pay to reflect advancement on retired list.

§ 8991. Computation of retired pay

The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed "For sections", retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, 3, and 4, as modified by the applicable footnotes. However, if a person would otherwise be entitled to retired pay computed under more than one pay formula of this table or the table in section 1401 of this title, he is entitled to be paid under the applicable formula that is most favorable to him. Section references below are to sections of this title.

Formula	For sections	Column 1	Column 2	Column 3	Column 4
		For a person who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) **[**on or after the date of the enactment of the Defense Authorization Act, 1981,**]** *after September 7, 1980,* take the monthly retired pay base as computed under section 1407(c). For all others, take	Multiply by	Add	Subtract
[A	**[**8883 8884 8885 8886 8913 8915 8916 8919 8921 8922 8923	**[**Monthly basic pay [2] of member's retired grade.[1]	**[**2½% of years of service credited to him under section 8888 or 8927(b), whichever is applicable.[4]	**[**Amount necessary to increase product of columns 1 and 2 to 50% of pay upon which computation is based.	**[**Excess over 75% of pay upon which computation is based.**]**
[B**]** *A*	8911 8918 8920 8924	Monthly basic pay [2] of member's retired grade.[1]	2½% of years of service credited to him under section 1405 of this title.[4]		Excess over 75% of pay upon which computation is based.
[C**]** *B*	8914	Monthly basic pay [3] to which member was entitled on day before he retired.	2½% of years of service credited to him under section 8925.[4]	10% of product of columns 1 and 2 for extraordinary heroism in line of duty.[5]	Excess over 75% of pay upon which computation is based.
[D**]** *C*	8917	Monthly basic pay [3] to which member was entitled on day before he retired.	2½% of years of service credited to him under section 8925.[4]		Excess over 75% of pay upon which computation is based.

[1] For the purposes of this section, determine member's retired grade as if section 8962(b) did not apply and, for an officer who has served as Chief of Staff, compute at the highest rates of basic pay applicable to him while he served in that office.

[2] Compute at rates applicable on date of retirement.

[3] Compute at rates applicable on date of retirement, or if the member has served as chief master sergeant of the Air Force, compute at the highest basic pay applicable to him while he so served, if such basic pay is greater.

[4] Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months.

[5] The Secretary of the Air Force's determination as to extraordinary heroism is conclusive for all purposes.

§ 8992. Recomputation of retired pay to reflect advancement on retired list

A member of the Air Force who is advanced on the retired list under section 8964 of this title is entitled to recompute his retired pay as follows:

Column 1	Column 2	Column 3	Column 4
For a person who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) [on or after the date of the enactment of the Defense Authorization Act, 1981,] *after September 7, 1980,* take the monthly retired pay base as computed under section 1407(c). For all others, take	Multiply by	Add	Subtract
Monthly basic pay or base and longevity pay, as the case may be,[1] of grade to which member is advanced on retired list.	2½% of years of service credited to him under section 8925 of this title.[2]		Excess over 75% of pay upon which computation is based.

[1] Compute at rates applicable on date of retirement.

[2] Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months.

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PART III—TRAINING

Chap. Sec.
901 Training Generally 9301
903 United States Air Force Academy 9331
907 Schools and Camps 9411
909 Civil Air Patrol 9441

CHAPTER 901—TRAINING GENERALLY

* * * * * * *

§ 9301. Members of Air Force: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals

(a) The Secretary of the Air Force may detail members of the Air Force as students at such technical, professional, and other civilian educational institutions, or as students, observers, or investigators at such industrial plants, hospitals, and other places, as are best suited to enable them to acquire knowledge or experience in the specialties in which it is considered necessary that they perfect themselves.

(b) An officer, other than one of the Regular Air Force on the [active list.] *active-duty list* who is detailed under subsection (a) shall be ordered to additional active duty immediately upon termination of the detail, for a period at least as long as the detail. However, if the detail is for 90 days or less, the officer may be ordered to that additional duty only with his consent and in the discretion of the Secretary.

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§ 9315. Community College of the Air Force: associate degrees

(a) * * *

* * * * * * *

(c) No degree may be conferred upon any enlisted member under this section unless (1) the Community College of the Air Force certifies to the commander of the Air Force Training Command that such member has satisfied all the requirements prescribed for such degree, and (2) the **[**Commissioner of Education of the Department of Health, Education, and Welfare**]** *Secretary of Education* determines that the standards for the award of academic degrees in agencies of the United States have been met.

CHAPTER 903—UNITED STATES AIR FORCE ACADEMY

* * * * * * *

§ 9331. Establishment; Superintendent; faculty

(a) There is in the Department of the Air Force an Air Force Academy**[**, in this chapter called the "Academy",**]** *(hereinafter in this chapter referred to as the "Academy")* for the instruction and preparation for military service of selected persons called "Air Force cadets". The organization of the Academy shall be prescribed by the Secretary of the Air Force.

* * * * * * *

§ 9336. Permanent professors; registrar

(a) A permanent professor of the Academy, other than the Dean of the Faculty, who is the head of a department of instruction, or who has served as such a professor for more than six years, has the grade of colonel. However, a permanent professor appointed from the Regular Air Force has the grade of colonel after the date when he completes six years of service as a professor, or after the date when a **[**promotion-list**]** *regular* officer, junior to him on the promotion list *or active-duty list* on which his name was carried before his appointment as a professor, is promoted to the regular grade of colonel, whichever is earlier. All other permanent professors have the grade of lieutenant colonel.

(b) A person appointed as registrar of the Academy has the regular grade of lieutenant colonel, and, after he has served six years as registrar, has the regular grade of colonel. However, a person appointed from the Regular Air Force has the regular grade of colonel after the date when he completes six years of service as registrar, or after the date when a **[**promotion-list**]** *regular* officer, junior to him on the promotion list *or active-duty list* on which his name was carried before his appointment as registrar, is promoted to the regular grade of colonel, whichever is earlier.

[(c) Unless he is serving in a higher grade, an officer detailed to perform the duties of registrar has, while performing those duties, the temporary grade of lieutenant colonel and, after performing those duties for a period of six years, has the temporary grade of colonel.]

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§ 9342. Cadets: appointment; numbers, territorial distribution

(a) * * *

* * * * * * *

(h) [Effective beginning with the nominations for appointment to the Academy in the calendar year 1964, the] *The* Secretary of the Air Force shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy.

* * * * * * *

§ 9353. Cadets: degree and commission on graduation

(a) After the date of the accrediting of the Academy, the Superintendent of the Academy may, under such conditions as the Secretary of the Air Force may prescribe, confer the degree of bachelor of science upon graduates of the Academy.

(b) Notwithstanding any other provision of law, a cadet who completes the prescribed course of instruction may, upon graduation, be appointed a second lieutenant in the Regular Air Force *under section 531 of this title*.

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CHAPTER 909—CIVIL AIR PATROL

Sec.
9441. Status: support by Air Force; employment.

§ 9441. Status: support by Air Force; employment

(a) The Civil Air Patrol is a volunteer civilian auxiliary of the Air Force.

(b) To assist the Civil Air Patrol in the fulfillment of its objectives as set forth in [section 202 of title 36] *section 2 of the Act of July 1, 1946 (36 U.S.C. 202)*, the Secretary of the Air Force may, under regulations prescribed by him with the approval of the Secretary of Defense—

(1) give, lend, or sell to the Civil Air Patrol without regard to the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.)—

(A) major items of equipment, including aircraft, motor vehicles, and communication equipment; and

(B) necessary related supplies and training aids;

that are excess to the military departments;

(2) permit the use of such services and facilities of the Air Force as he considers to be needed by the Civil Air Patrol to carry out its mission;

(3) furnish such quantities of fuel and lubricants to the Civil Air Patrol as are needed by it to carry out any mission assigned to it by the Air Force, including unit capability testing missions and training missions;

(4) establish, maintain, and supply liaison offices of the Air Force at the National, State, and Territorial headquarters, and at not more than eight regional headquarters, of the Civil Air Patrol;

(5) detail or assign any member of the Air Force or any officer or employee of the Department of the Air Force to any liaison office at the National, State, or Territorial headquarters, and at not more than eight regional headquarters, of the Civil Air Patrol;

(6) detail any member of the Air Force or any officer or employee of the Department of the Air Force to any unit or installation of the Civil Air Patrol to assist in the training program of the Civil Air Patrol;

(7) in time of war, or of national emergency declared after May 27, 1954, by Congress or the President, authorize the payment of travel expenses and allowances, in accordance with [the Travel Expense Act of 1949 (5 U.S.C. 835 et seq.)] *subchapter I of chapter 57 of title 5,* to members of the Civil Air Patrol while carrying out any mission specifically assigned by the Air Force; and

(8) authorize the payment of aircraft maintenance expenses relating to operational missions, unit capability testing missions, and training missions.

(c) The Secretary may use the services of the Civil Air Patrol in fulfilling the noncombat mission of the Department of the Air Force.

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

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CHAPTER 933—PROCUREMENT

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§ 9537. Military surveys and maps: assistance of United States mapping agencies

The Secretary of the Air Force may obtain the assistance of the United States Geological Survey, the [Environmental Science Services Administration] *National Oceanic and Atmospheric Administration,* and other mapping agencies of the United States in—

(1) making topographic and other surveys;

(2) obtaining extra topographic data;

(3) making maps needed for military purposes;

(4) research and development of surveying by aerial photography; and

(5) developing methods of field reproduction.

§ 9538. Unserviceable ammunition: exchange and reclamation

(a) * * *

(b) Subject to applicable regulations under section [486 of title 40,] *205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486),* the Secretary may exchange deteriorated and unserviceable ammunition and components thereof for serviceable ammunition or components.

§ 9540. Architectural and engineering services

(a) * * *

* * * * * * *

(c) Sections 305, 3324, **[**5101-5115, 5331-5338, 5341, 5342, and 7204 of title 5 and subchapter VI of chapter 53 of such title 5**]** *and 7204, chapter 51, and subchapters III and IV; and VI of chapter 53 of title 5* do not apply to employment under this section.

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CHAPTER 939—SALE OF SERVICEABLE MATERIAL

Sec.
9621. Subsistence and other supplies: members of armed forces; veterans; executive or military departments and employees; prices.
9622. Rations: commissioned officers in field.
9623. Tobacco: enlisted members of Air Force.
9624. Medical supplies: civilian employees of Air Force; American National Red Cross; Soldiers' *and Airmen's* Home.
9625. Ordnance property: officers of armed forces; civilian employees of Air Force; American National Red Cross; educational institutions; homes for veterans' orphans.
9626. Aircraft supplies and services: foreign military or air attache.
9627. Supplies: educational institutions.
9628. Airplane parts and accessories: civilian flying schools.
9629. Proceeds: disposition.

§ 9621. Subsistence and other supplies; members of armed forces; veterans; executive or military departments and employees; prices

(a) * * *

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(f) Under such conditions as the Secretary may prescribe, exterior articles of uniform may be sold to a person who has been discharged from the Air Force honorably or under honorable conditions, at the prices at which like articles are sold to members of the Air Force. This subsection does not modify section 772**[**, 773, or 8612**]** *or 773* of this title.

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§ 9624. Medical supplies: civilian employees of Air Force; American National Red Cross; Soldiers' *and Airmen's* Home

(a) * * *

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(c) The Secretary may sell medical and hospital supplies to the *United States* Soldiers' *and Airmen's* Home.

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CHAPTER 943—DISPOSAL OF OBSOLETE OR SURPLUS MATERIAL

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§9681. Surplus war material: sale to States and foreign governments

Subject to regulations under section **[**486 of title 40**]** *205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)*, the Secretary of the Air Force may sell surplus war material and supplies, except food, of the Department of the Air Force, for which there is no adequate domestic market, to any State or to any foreign government with which the United States was at peace on June 5, 1920. Sales under this section shall be made upon terms that the Secretary considers expedient.

§9682. Obsolete or excess material: sale to National Council of Boy Scouts of America

Subject to regulations under section **[**486 of title 40**]** *205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)*, the Secretary of the Air Force, under such conditions as he may prescribe, may sell obsolete or excess material to the National Council of the Boy Scouts of America. Sales under this section shall be at fair value to the Department of the Air Force, including packing, handling, and transportation.

§9684. Surplus obsolete ordnance: sale to patriotic organizations

Subject to regulations under section **[**486 of title 40**]** *205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)*, the Secretary of the Air Force may sell, without advertisement and at prices that he considers reasonable—

(1) surplus obsolete small arms and ammunition and equipment for them, to any patriotic organization for military purposes; and

(2) surplus obsolete brass or bronze cannons, carriages, and cannon balls, for public parks, public buildings, and soldiers' monuments.

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§9686. Obsolete ordnance: gift to State homes for soldiers and sailors

Subject to regulations under section **[**486 of title 40**]** *205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)*, the Secretary of the Air Force may give not more than two obsolete bronze or iron cannons suitable for firing salutes to any home for soldiers or sailors established and maintained under State authority.

CHAPTER 945—INQUESTS; DISPOSITION OF EFFECTS OF DECEASED PERSONS

Sec.
9711. Inquests.
9712. Disposition of effects of deceased persons by summary court-martial.
9713. Disposition of effects of deceased persons by Soldiers' *and Airmen's* Home.

* * * * * * *

§9712. Disposition of effects of deceased persons by summary court-martial

(a) Upon the death of—

(1) a person subject to military law at a place or command under the jurisdiction of the Air Force; or

(2) an inmate of the *United States* Soldiers' *and Airmen's* Home who dies in an Air Force hospital outside the District of Columbia when sent from the Home to that hospital for treatment;

the commanding officer of the place or command shall permit the legal representative or the surviving spouse of the deceased, if present, to take possession of the effects of the deceased that are then at the air base or in quarters.

* * * * * * *

(f) As soon as practicable after the effects have been converted into cash under subsection (e), the summary court-martial shall deposit all cash in the court's possession and belonging to the estate with the officer designated in regulations, and shall send a receipt therefor, together with any will or other papers of value, an inventory of the effects and articles not permitted to be sold, to the executive part of the Department of the Air Force for transmission to the *United States* Soldiers' *and Airmen's* Home.

(g) The summary court-martial shall make a full report of the transactions under this section, with respect to the deceased, to the Department of the Air Force for transmission to the General Accounting Office for action authorized in the settlement of accounts of deceased members of the Air Force.

§9713. Disposition of effects of deceased persons by Soldiers' *and Airmen's* Home

(a) The effects of a deceased person that the Department of the Air Force receives under section 9712(f) of this title shall be delivered to the *United States* Soldiers' *and Airmen's* Home. The Home shall dispose of the effects as follows:

(1) * * *

* * * * * * *

CHAPTER 949—REAL PROPERTY

Sec.

9771. Acceptance of donations: land for mobilization, training, supply base, or aviation field.
[9772. Reservation and use for air base or testing field.]
9773. Acquisition and construction: air bases and depots.
9774. Construction: limitations.
9776. Emergency construction: fortifications.
9777. Permits: military reservations; landing ferries, erecting bridges, driving livestock.
9778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association.
9779. Use of public property.
9780. Acquisition of buildings in District of Columbia.

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CHAPTER 953—ACCOUNTABILITY AND RESPONSIBILITY

Sec.
9831. Custody of departmental records and property.
9832. Property accountability: regulations.
9835. Reports of survey.
9836. Individual equipment: unauthorized disposition.
9837. Settlement of accounts: [deductions from pay] *remission or cancellation of indebtedness of enlisted members.*
9838. Settlement of accounts: affidavit of squadron commander.
9839. Settlement of accounts: oaths.
9840. Final settlement of officer's accounts.

* * * * * * *

§ 9837. Settlement of accounts: [deductions from pay] *remission or cancellation of indebtedness of enlisted members*

[(d)] If he considers it in the best interest of the United States, the Secretary may have remitted or cancelled any part of an elisted member's indebtedness to the United States or any of its instrumentalities remaining unpaid before, or at the time of, that member's honorable discharge.

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TITLE 14, UNITED STATES CODE

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PART I—REGULAR COAST GUARD

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CHAPTER 11—PERSONNEL

OFFICERS

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D. DISCHARGES; RETIREMENTS; REVOCATION OF COMMISSIONS

281. Revocation of commissions during first three years of commissioned service.
282. Regular lieutenants (junior grade); separation for failure of selection for promotion.
283. Regular lieutenants, separation for failure of selection for promotion; continuation.
284. Regular Coast Guard; officers serving under temporary appointments.
285. Regular lieutenant commanders and commanders; retirement for failure of selection for promotion.
286. Discharge in lieu of retirement; severance pay.
286a. Regular warrant officers: severance pay.
287. Separation for failure of selection for promotion or continuation; time of.
288. Regular captains; retirement.
289. Captains; continuation on active duty; involuntary retirement.
290. Rear admirals; continuation on active duty; involuntary retirement.
291. Voluntary retirement after twenty years' service.
292. Voluntary retirement after thirty years' service.
293. Compulsory retirement at age of sixty-two.
294. Retirement for physical disability after selection for promotion; grade in which retired.

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D. DISCHARGES; RETIREMENTS; REVOCATION OF COMMISSIONS

* * * * * * *

§ 286a. Regular warrant officers: severance pay

(a) The severance pay of a regular warrant officer of the Coast Guard who is separated under section 564(a)(3) of title 10 is computed by multiplying his years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended, but not more than 12, by twice the monthly basic pay to which he is entitled at the time of separation.

(b) The severance pay of a regular warrant officer of the Coast Guard who is separated under section 1166 of title 10 is computed by multiplying his years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended, but not more than 12, by the monthly basic pay to which he is entitled at the time of separation.

(c) For the purposes of this section, a part of the year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

(d) The acceptance of severance pay under this section does not deprive a person of any retirement benefits from the United States. However, there shall be deducted from each of his retirement payments so much thereof as is based on the service for which he has received severance pay under this section, until the total deductions equal the amount of such severance pay. However, no person is entitled to severance pay under this section in an amount that is more than $15,000.

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F. MISCELLANEOUS PROVISIONS

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SPECIAL PROVISIONS

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§ 438. Laws not applicable to warrant officers of former Life Saving Service, Lighthouse Service, Bureau of Marine Inspection and Navigation, and Bureau of Customs

Sections 101, 515, 555–557, 559–565, 597–599, 745, 1164–[1167, 1255,] *1166*, 1263, 1293, 1371, and 1401 of title 10, do not affect any right, privilege, or benefit provided for warrant officers by section 431, 432, or 433 of this title.

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TITLE 32, UNITED STATES CODE

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CHAPTER 1—ORGANIZATION

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§ 101. Definitions.

In addition to the definitions in sections 1–5 of title 1, the following definitions apply in this title:

(1) * * *

* * * * * * *

(12) "Active duty" means full-time duty in the active military service of the United States. It includes such Federal duty as duty on the [active list,] *active-duty list,* full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

CHAPTER 3—PERSONNEL

Sec.

301. Federal recognition of enlisted members.
302. Enlistments, reenlistments, and extensions.
303. Active and inactive enlistments and transfers.
304. Enlistment oath.
305. Federal recognition of commissioned officers: persons eligible.
307. Federal recognition *of officers*: examination; certificate of eligibility.
308. Federal recognition of officers: temporary recognition.
309. Federal recognition of officers: Army National Guard; offices promoted to fill vacancies.
310. Federal recognition of officers: Army National Guard; automatic recognition.
312. Appointment oath.
313. Appointments and enlistments: age limitations.
314. Adjutants general.
315. Detail of regular members of Army and Air Force to duty with National Guard.
316. Detail of members of Army National Guard for rifle instruction of civilians.
317. Command during joint exercises with Federal troops.
318. Compensation for disablement during training.
319. Compensation for disablement during training when not covered by section 318 of this title.
320. Hospitalization: when Secretary may require.
321. Death gratuity.
322. Discharge of enlisted members.
323. Withdrawal of Federal recognition.
324. Discharge of officers; termination of appointment.
325. Relief from National Guard duty when ordered to active duty.
326. Courts-martial of National Guard not in Federal service: composition, jurisdiction, and procedures.
327. General courts-martial of National Guard not in Federal service.
328. Special courts-martial of National Guard not in Federal service.
329. Summary courts-martial of National Guard not in Federal service.
330. Confinement instead of fine.
331. Dismissal or dishonorable discharge.
332. Compelling attendance of accused and witnesses.
333. Execution of process and sentence.
334. Payment of malpractice liability of National Guard Medical personnel.

* * * * * * *

§ 303. Active and inactive enlistments and transfers.

(a) * * *

* * * * * * *

[(d)] *(c)* In time of peace, no enlisted member may be required to serve for a period longer than that for which he enlisted in the active or inactive National Guard.

* * * * * * *

§ 334. Payment of malpractice liability of National Guard Medical personnel

(a) * * *

* * * * * * *

(e) The provisions of this section shall not apply in the case of any claim for damages against any medical personnel settled under the provisions of section 715 of [title 32] *this title*.

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CHAPTER 7—SERVICE, SUPPLY, AND PROCUREMENT

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§ 708. Property and fiscal officers

(a) * * *

(b) Each property and fiscal officer shall—

[(2)] *(1)* receipt and account for all funds and property of the United States in the possession of the National Guard for which he is property and fiscal officer; and

[(3)] *(2)* make returns and reports concerning those funds and that property, as required by the Secretary concerned.

* * * * * * *

§ 709. Technicians: employment, use, status

(a) * * *

* * * * * * *

(f) Sections 2108, 3502, 7511, and 7512 of title 5[, United States Code,] do not apply to any person employed under this section.

(g)(1) Notwithstanding sections 5544(a) and [6102 of title 5, United States Code,] *6101(a) of title 5* or any other provision of law, the Secretary concerned may, in the case of technicians assigned to perform operational duties at air defense sites—

(A) prescribe the hours of duties;

(B) fix the rates of basic compensation; and

(C) fix the rates of additional compensation;

to reflect unusual tours of duty, irregular additional duty, and work on days that are ordinarily nonworkdays. Additional compensation under this subsection may be fixed on an annual basis and is determined as an appropriate percentage, not in excess of 12 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS–10 of the General Schedule under section 5332 of title 5[, United States Code].

(2) Notwithstanding sections 5544(a) and [6102 of title 5, United States Code,] *6101(a) of title 5* or any other provision of law, the Secretary concerned may, for technicians other than those described in clause (1) of this subsection, prescribe the hours of duty for technicians. Notwithstanding section 5542 and 5543 of title 5[,

United States Code,] or any other provision of law, such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.

(h) In no event shall the number of technicians employed under this section at any one time exced 53,100[, except that the number of technicians so employed may not exceed 49,200 during the fiscal year beginning July 1, 1971].

§710. Reports of survey

(a) * * *

* * * * * * *

(d) If property surveyed under this section is found to be unserviceable or unsuitable, the Secretary concerned or his designated representative shall direct its disposition by sale or otherwise. The proceeds of the following under this subsection shall be deposited in the Treasury under section [725c(b)(22) of title 31] *4(b)(22) of the Permanent Appropriation Repeal Act, 1934 (31 U.S.C. 725c(b)(22))*:

(1) A sale.

(2) A stoppage against a member of the National Guard.

(3) A collection from a person, or from a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, to reimburse the United States for the loss or destruction of, or damage to, the property.

* * * * * * *

§716. Claims for overpayment of pay and allowances, other than travel and transportation allowances

(a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances, other than travel and transportation allowances, made before or after [the effective date of this section] *October 2, 1972*, to or on behalf of a member or former member of the National Guard, the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by—

(1) the Comptroller General; or

(2) the Secretary concerned, as defined in section 101(5) of title 37, when—

(A) the claim is in an amount aggregating not more than $500;

(B) the claim is not the subject of an exception made by the Comptroller General in the account of any accountable officer or official; and

(C) the waiver is made in accordance with standards which the Comptroller General shall prescribe.

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TITLE 37, UNITED STATES CODE

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CHAPTER 1—DEFINITIONS

Sec.
101. Definitions

§ 101. Definitions

In addition to the definitions in sections 1–5 of title 1, for the purposes of this title—

(1) * * *

* * * * * * *

(3) "uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, [Environmental Science Services Administration] *National Oceanic and Atmospheric Administration*, and Public Health Service;

(4) "armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard;

(5) "Secretary concerned" means—

(A) * * *

* * * * * * *

(E) the Secretary of Commerce, with respect to matters concerning the [Environmental Science Services Administration] *National Oceanic and Atmospheric Administration*, and

(F) the Secretary of [Health, Education, and Welfare] *Health and Human Services*, with respect to matters concerning the Public Health Service;

* * * * * * *

(18) "active duty" means full-time duty in the active service of a uniformed service, and includes duty on the [active list] *active-duty list*, full-time training duty, annual training duty, and attendance, while in the active service, at a school designated as a service school by law or by the Secretary concerned;

* * * * * * *

CHAPTER 3—BASIC PAY

Sec.
201. Pay grades: assignment to; general rules.
202. Pay grades: assignment to; rear admirals [of upper half; officers holding certain positions in the Navy] *(upper half) of the Coast Guard*.
203. Rates.
204. Entitlement.
205. Computation: service creditable.
206. Reserves; members of National Guard: inactive-duty training.
207. Band leaders.
209. Members of precommissioning programs.

§ 201. Pay grades: assignment to; general rules

(a) For the purpose of computing their basic pay, commissioned officers of the uniformed services (other than commissioned warrant officers) are assigned by the grade or rank in which serving to the following pay grades:

Pay grade	Army, Air Force, and Marine Corps	Navy, Coast Guard, and [Environmental Science Services Administration] *National Oceanic and Atmospheric Administration*	Public Health Service
O-10	General	Admiral	
O-9	Lieutenant general.	Vice admiral	
O-8	Major general	[Rear admiral (upper half)] *Rear admiral (navy) and Rear admiral (upper half) (Coast Guard and National Oceanic and Atmospheric Administration).*	Surgeon General. Deputy Surgeon General. Assistant Surgeon General having rank of major general.
O-7	Brigadier general	[Rear admiral (lower half) and commodore] *Commodore admiral (Navy) and Rear admiral (lower half) and commodore (Coast Guard and National Oceanic and Atmospheric Administration).*	Assistant Surgeon General having rank of brigadier general.
O-6	Colonel	Captain	Director grade.
O-5	Lieutenant colonel	Commander	Senior grade.
O-4	Major	Lieutenant commander	Full grade.
O-3	Captain	Lieutenant	Senior assistant grade.
O-2	1st lieutenant	Lieutenant (junior grade).	Assistant grade.
O-1	2d lieutenant	Ensign	Junior assistant grade.

* * * * * * *

(f) Except as provided by subsections [(e) and (f)] *(d) and (e)* of this section, enlisted members of the uniformed services shall, for the purpose of computing their basic pay, be distributed by the Secretary concerned in the various enlisted pay grades set forth in section 203 of this title. However, except as provided by section 307 of this title, an enlisted member may not be placed in pay grade E-8 or E-9 until he has completed at least 8 years or 10 years, respectively, of enlisted service computed under section 205 of this title.

§ 202. Pay grades: assignment to; rear admirals [of upper half; officers holding certain positions in the Navy] *(upper half) of the Coast Guard*

[(a) An officer not restricted in the performance of duty on the active list in the line of the Navy serving in the grade of rear admiral is entitled to the basic pay of a rear admiral of the upper half from the date on which the number of officers not restricted in the performance of duty on the active list in the line of the Navy serving in the grade of rear admiral below him on the lineal list becomes equal to or greater than the number of such officers above him on the lineal list. For the purpose of determining the number of rear admirals of the upper half, an officer not restricted in the performance of duty on the active list in the line of the Navy serving in the grade of admiral or vice admiral is considered as having the grade and position on the lineal list he would have if he had not been appointed admiral or vice admiral.

[(b) An officer restricted in the performance of duty on the active list in the line of the Navy serving in the grade of rear admiral is entitled to the basic pay of a rear admiral of the upper half from the date on which any officer below him on the lineal list becomes entitled to that pay under subsection (a) of this section.

[(c) An officer on the active list of the Navy in a staff corps serving in the grade of rear admiral is entitled to the basic pay of a rear admiral of the upper half from the date on which his running mate becomes entitled to that pay under this section, but not before the date of the vacancy he was promoted to fill.

[(d) A rear admiral of the Naval Reserve entitled to basic pay is entitled to the basic pay of a rear admiral of the upper half when any officer on the active list in the line of the Navy junior to him is in the upper half of the grade of rear admiral as determined under subsection (a) of this section.]

[(e)] *(a)* An officer of [the Navy or] the Coast Guard holding a permanent appointment in the grade of rear admiral on the retired list who is entitled to the basic pay of a rear admiral of the lower half and who, in time of war or national emergency, has served satisfactorily on active duty for two years in that grade or in a higher grade is entitled when on active duty to the basic pay of a rear admiral of the upper half.

[(f)] *(b)* The number of rear admirals on the active list of the Coast Guard entitled to the basic pay of a rear admiral of the upper half is one-half of the number of officers on the active list in grades above captain, less the number of officers serving in grades above rear admiral. If the division results in an odd number, the odd number shall be placed in the upper half. However, an officer who is entitled to the basic pay of a rear admiral of the upper half may not have his basic pay reduced solely because the number of rear admirals is reduced.

[(g) Unless appointed to a higher grade under another provision of law, an officer of the Marine Corps, while serving as Judge Advocate General of the Navy or as Deputy Judge Advocate General of the Navy, is entitled to the basic pay of a major general.

[(h) Unless appointed to a higher grade under another provision of law, an officer of the naval service who is serving in one of the following positions is entitled to the basic pay of a rear admiral of the upper half—

[(1) Director of Budget and Reports;

[(3) Chief of a Bureau;

[(4) Chief of the Dental Division in the Bureau of Medicine and Surgery;

[(5) Chief of Chaplains;

[(6) Judge Advocate General of the Navy;

[(7) Deputy Judge Advocate General of the Navy; or

[(8) Chief of Naval Research.

[(i) An officer of the naval service who is serving in one of the following positions is entitled to the highest pay of his rank—

[(1) Assistant Director of Budget and Reports;

[(2) detailed to duty as a Deputy Chief of a Bureau;

[(3) Assistant Chief of Naval Research; or

[(4) Assistant Commandant of the Marine Corps.

[(j) An officer on the active list of the Navy in the grade of rear admiral who is serving as Deputy Comptroller of the Navy is entitled to the basic pay of a rear admiral of the upper half.

[(k) While serving under an appointment under section 5767(c) of title 10, a woman officer of the Navy is entitled to the pay of a rear admiral of the lower half.

[(l) Unless appointed to a higher grade under another provision of law, an officer of the Navy or Marine Corps serving as Assistant Judge Advocate General of the Navy is entitled to the basic pay of a rear admiral (lower half) or brigadier general, as appropriate.]

* * * * * * *

§ 204. Entitlement

(a) [Except for members covered by section 202(i) of this title, the] *The* following persons are entitled to the basic pay of the pay grade to which assigned or distributed, in accordance with their years of service computed under section 205 of this title—

(1) a member of a uniformed service who is on active duty; and

(2) a member of a uniformed service, or a member of the National Guard who is not a Reserve of the Army or the Air Force, who is participating in full-time training, training duty with pay, or other full-time duty, provided by law, including participation in exercises or the performance of duty under section 3033, 3496, 3541, 8033, 8496, or 8541 of title 10, or section 503, 504, 505, or 506 of title 32.

* * * * * * *

§ 205. Computation: service creditable

(a) Subject to subsections [(b)-(d)] *(b) and (c)* of this section, for the purpose of computing the basic pay of a member of a uniformed service, his years of service are computed by adding—

(1) * * *

* * * * * * *

(5) all periods during which he was a deck officer or junior engineer in the [Environmental Science Services Administration] *National Oceanic and Atmospheric Administration;*

(6) all periods that, under law in effect on January 10, 1962, were authorized to be credited in computing basic pay; *and*

[(7) for an officer of the Medical Corps or Dental Corps of the Army or Navy, an officer of the Air Force designated as a medical or dental officer, or an officer of the Public Health Service commissioned as a medical or dental officer—four years;

[(8) for a medical officer named in clause (7) who has completed one year of medical internship or the equivalent thereof—one year in addition to the four years prescribed by clause (7); and]

[(9)] *(7)* all periods while—

(A) on a temporary disability retired list, honorary retired list, or a retired list of a uniformed service;

(B) entitled to retired pay, retirement pay, or retainer pay, from a uniformed service or the Veterans' Administration, as a member of the Fleet Reserve or the Fleet Marine Corps Reserve; or

(C) a member of the Honarary Reserve of the Officers' Reserve Corps or the Organized Reserve Corps.

Except for any period of active service described in clause (1) of this subsection and except as provided by [section 1402(b)-(d) and section 1402a(a)-(d)] *subsections (b), (c), and (d) of section 1402 and subsections (b), (c), and (d) of section 1402a* of title 10, a period of service described in clauses (2)-(9) of this subsection that is performed while on a retired list, in a retired status, or in the Fleet Reserve or Fleet Marine Corps Reserve, may not be included to increase retired pay, retirement pay or retainer pay. For the purpose of clause (5) of this subsection, periods during which a member was a deck officer or junior engineer in the [Environmental Science Services Administration] *National Oceanic and Atmospheric Administration* includes periods during which a member was deck officer or junior engineer in the *Environmental Science Services Administration or the* Coast and Geodetic Survey.

(b) A period of time may not be counted more than once under subsection (a) of this section. [In addition, the amount of service authorized to be credited under clause (7) or (8) of subsection (a) of this section to an officer shall be reduced by the amount of any service otherwise creditable under that subsection that covers any part of his professional education or internship.]

[(c) Notwithstanding any other law, service credited under clause (7) or (8) subsection (a) of this section may not—

[(1) be included in establishing eligibility for voluntary or involuntary retirement or separation from a uniformed service;

[(2) increase the retired or retirement pay of a person who became entitled to that pay before May 1, 1956; or

[(3) increase the retired pay of a person who is entitled to that pay under chapter 67 of title 10, after April 30, 1956, and who does not perform active duty after May 1, 1956.]

[(d)] *(c)* The periods of service authorized to be counted under subsection (a) of this section shall, under regulations prescribed by the Secretary concerned, include service performed by a member of a uniformed service before he became 18 years of age.

[(e)] *(d)* Notwithstanding subsection (a), a commissioned officer may not count in computing his basic pay any period of service after October 13, 1964, that he performed concurrently as a member of the Senior Reserve Officers' Training Corps.

* * * * * * *

§ 209. Members of Precommissioning Programs

(a) Except when on active duty, a member of the Senior Reserve Officers' Training Corps who is selected for advanced training under section 2104 of title 10 is entitled to a subsistence allowance of $100 a month beginning on the day he starts advanced training and ending upon the completion of his instruction under that section, but in no event shall any member receive such pay for more than 20 months. Subsistence allowance under this section may not be considered financial assistance requiring additional service within the meaning of the third sentence of section **[**456(d)(1) of title 50, appendix**]** *6(d)(1) of the Military Selective Service Act (50 U.S.C. App. 456(d)(1)).*

* * * * * * *

CHAPTER 5—SPECIAL AND INCENTIVE PAYS

Sec.
301. Incentive pay: hazardous duty.
301a. Incentive pay: aviation career.
301b. Special pay: aviation career officers extending period of active duty.
302. Special pay: medical officers of the armed forces.
302a. Special pay: optometrists.
302b. Special pay: dentists.
[302c. Special pay: medical officers of the Public Health Service.**]**
303. Special pay: veterinarians.
303a. Special pay: health professionals; general provisions.
304. Special pay: diving duty.
305. Special pay: while on duty at certain places.
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306. Special pay: officers holding positions of unusual responsibility and of critical nature.
307. Special pay: proficiency pay for enlisted members.
308. Special pay: reenlistment bonus.
308a. Special pay: enlistment bonus.
308b. Special pay: reenlistment bonus for members of the Selected Reserve.
308c. Special pay: bonus for enlistment in the Selected Reserve.
308d. Special pay: bonus for enlistment, reenlistment, or extension of enlistment in elements of the Ready Reserve other than the Selected Reserve.
308e. Special pay: bonus for reserve affiliation agreement.
310. Special pay: duty subject to hostile fire.
311. Special pay: continuation pay for dentists in the armed forces **[**and physicians and dentists in the Public Health Service**]**.
312. Special pay: nuclear-qualified officers extending period of active service.
312a. Special pay: nuclear-trained and qualified enlisted members.
312b. Special pay: nuclear career accession bonus.
312c. Special pay: nuclear career annual incentive bonus.
[313. Special pay: medical officers of the Public Health Service who execute active duty agreements.**]**

§ 301. Incentive pay: hazardous duty

(a) Subject to regulations prescribed by the President, a member of a uniformed service who is entitled to basic pay is also entitled to incentive pay, in the amount set forth in subsection (b) or (c) of this section, for the performance of hazardous duty required by orders. For the purposes of this subsection, "hazardous duty" means duty—

(1) * * *

(2) as determined by the Secretary concerned, on a submarine (including, in the case of nuclear-powered submarines, periods of training and rehabilitation after assignment thereto), or, in the case of personnel qualified in submarines, as a member of a submarine operational command staff whose duties require serving on a submarine during underway operations—

(A) during one calendar month: 48 hours; however, hours served underway in excess of 48 as a member of a submarine operational command staff during any of the immediately preceding five calendar months and not already used to qualify for incentive pay may be applied to satisfy the underway time requirements for the current month;

(B) during any two consecutive calendar months when the requirements of [clause (A) above] *subclause (A) of this clause* have not been met: 96 hours; or

(C) during any three consecutive calendar months when the requirements of [clause (B) above] *subclause (B) of this clause* have not been met: 144 hours;

as a prospective crew member of a submarine being constructed, and during periods of instruction to prepare for assignment to a submarine of advanced design or a position of increased responsibility on a submarine;

* * * * * * *

(f) Under regulations prescribed by the President and to the extent provided for by appropriations, when a member of a reserve component of a uniformed service, or of the National Guard, who is entitled to compensation under section 206 of this title, performs, under orders, any duty described in subsection [(a)(1)-(12)] *(a)* of this section for members entitled to basic pay, he is entitled to an increase in compensation equal to 1/30 of the monthly incentive pay authorized by subsection (b) or (c) of this section, as the case may be, for the performance of that hazardous duty by a member of a corresponding grade who is entitled to basic pay. He is entitled to the increase for as long as he is qualified for it, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours, including that performed on a Sunday or holiday, or for the performance of such other equivalent training, instruction, duty or appropriate duties, as the Secretary may prescribe under section 206(a) of this title. This subsection does not apply to a member who is entitled to basic pay under section 204 of this title.

§ 301a. Incentive pay: aviation career

(a)(1) * * *

* * * * * * *

(3) Under regulations prescribed by the Secretary of Defense, the Secretary of Transportation with the respect to the Coast Guard when it is not operating as a service in the Navy, or the Secretary of Commerce and the Secretary of [Health, Education, and Welfare] *Health and Human Services* with respect to members under the respective jurisdiction, an officer (except a flight surgeon or other medical officer) who is entitled to basic pay, holds an aeronautical rating or designation, and is qualified for aviation service under regulations prescribed by the Secretary concerned, is entitled to continuous monthly incentive pay in the amount set forth in subsection (b) of this section that is applicable to him. A flight surgeon or other medical officer who is entitled to basic pay, holds an aeronautical rating or designation, and is qualified for aviation service under regulations prescribed by the Secretary concerned, is not entitled to continuous monthly incentive pay but is entitled to

monthly incentive pay is the amounts set forth is subsection (b) of this section for the frequent and regular performance of operational flying duty.

*　　*　　*　　*　　*　　*　　*

§ 302. Special pay: medical officers of the armed forces

(a)(1) * * *

*　　*　　*　　*　　*　　*　　*

(h)(1) Any reserve officer who is an officer of the Medical Corps of the Army or the Navy or an officer of the Air Force designated as a medical officer—

(A) who has served on active duty for not less than one year; and

(B) is not on active duty under a call or order to active duty for a period of not less than one year;

is entitled to special pay in accordance with this subsection.

(2) An officer described in paragraph (1) of this subsection is entitled to special pay at the rate of—

(A) $100 a month for each month of active duty, if he has not completed two years of active duty; or

(B) $350 a month for each month of active duty, if he has completed at least two years of active duty.

*　　*　　*　　*　　*　　*　　*

§ 302c. Special pay: medical officers of the Public Health Service

[(a) A medical officer of the Public Health Service who is on active duty for a period of at least one year is entitled to special pay at the following rates:

[(1) $100 a month for each month of active duty if the officer has not completed two years of active duty as an officer of the Medical Corps of the Army or Navy, as an officer of the Air Force designated as a medical officer, or as a medical officer of the Public Health Service.

[(2) $350 a month for each month of active duty if the officer has completed at least two years of active duty as an officer of the Medical Corps of the Army or Navy, as an officer of the Air Force designated as a medical officer, or as a medical officer of the Public Health Service.

[(b)(1) Subject to subsection (c) of this section and paragraph (2) of this subsection and under regulations prescribed under section 303a(a) of this title, an officer who is entitled to special pay under subsection (a) of this section and who is serving in a pay grade below pay grade O-7 may be paid incentive special pay in an amount not to exceed $8,000 for any twelve-month period during which the officer is not undergoing medical internship or initial residency training.

[(2) An officer is not eligible for incentive special pay under paragraph (1) of this subsection unless the Secretary of Health and Human Services has determined that such officer is qualified in the medical profession.

[(3) The amount that may be paid for incentive special pay under this subsection in any fiscal year may not exceed 6 percent of the total amount paid in such year for special pay under section

311 of this title for medical officers of the Public Health Service, for special pay under section 313 of this title, and for special pay under this section.

[(c)(1) An officer may not be paid incentive special pay under subsection (b) of this section for any twelve-month period unless the officer first executes a written agreement under which the officer agrees to remain on active duty for a period of not less than one year beginning on the date the officer accepts the award of such special pay.

[(2) Under regulations prescribed under section 303a(a) of this title, the Secretary of Health and Human Services may terminate at any time an officer's entitlement to the special pay authorized by subsection (b) of this section. If such entitlement is terminated, the officer concerned is entitled to be paid such special pay only for the part of the period of active duty that he served, and he may be required to refund any amount in excess of that entitlement.

[(d) Regulations prescribed by the Secretary of Health and Human Services under section 303a(a) of this title shall include standards for determining whether an officer is undergoing medical internship or initial residency training for purposes of subsection (b) of this section.

[(e) Special pay payable to an officer under subsection (b) of this section shall be paid annually at the beginning of the twelve-month period for which the officer is entitled to such payment.

[(f) An officer who voluntarily terminates service on active duty before the end of the period for which a payment was made to such officer under subsection (b) of this section shall refund to the United States an amount which bears the same ratio to the amount paid to such officer as the unserved part of such period bears to the total period for which the payment was made.]

* * * * * * *

§303a. Special pay: health professionals; general provisions

(a) The Secretary of Defense, with respect to the Army, Navy, and Air Force, and the Secretary of Health and Human Services, with respect to the Public Health Service, shall prescribe regulations for the administration of sections 302, 302a, 302b, [302c, 303, 311, and 313] *303, and 311* of this title.

(b) Special pay authorized under sections 302, 302a, 302b, [302c,] and 303 of this title is in addition to any other pay or allowance to which an officer is entitled. The amount of special pay to which an officer is entitled under any of such sections may not be included in computing the amount of any increase in pay authorized by any other provision of this title or in computing retired pay, *separation pay*, severance pay, or readjustment pay.

* * * * * * *

§311. Special pay: continuation pay for dentists in the armed forces [and physicians and dentists in the Public Health Service]

(a)(1) * * *

[(2) Under regulations to be prescribed by the Secretary of Health and Human Services, a medical officer of the Public Health Service above the pay grade of O-6 or such an officer who is below that pay grade who is undergoing initial residency training and who was on active duty on July 1, 1974, or a dental officer of the Public Health Service who—

[(A) is serving on active duty in a critical specialty designated by the Secretary of Health and Human Services;

[(B) has completed his initial active-duty obligations; and

[(C) executes a written agreement to remain on active duty for at least one additional year;

may be paid not more than four months' basic pay at the rate applicable to him when he executes that agreement for each additional year that he agrees to remain on active duty.]

[(3)] *(2)* Pay under this section shall be paid in equal annual or semiannual installments as determined by the Secretary of Defense or the Secretary of Health and Human Services, as appropriate, in each additional year covered by an agreement to remain on active duty. However, in meritorious cases, the pay may be paid in fewer installments if the Secretary determines it to be in the best interest of the officer.

* * * * * * *

(c) The Secretary of Defense and the Secretary of [Health, Education, and Welfare] *Health and Human Services* shall submit separate written reports each year to the Committees on Armed Services of the Senate and House of Representatives regarding the operation of the special pay program authorized by subsection (a) of this section and, whenever such special pay program is to be continued in operation, such report shall include the justification for continuing such program. Reports under this section shall be made on a calendar year basis, beginning with the calendar year 1968, and the reports for any calendar year shall be submitted not later than April 1 of the succeeding calendar year.

§312. Special pay: nuclear-qualified officers extending period of active duty

(a) Under regulations to be prescribed by the Secretary of the Navy, an officer of the naval service who—

(1) is entitled to basic pay;

[(3)] *(2)* has the current technical qualification for duty in connection with supervision, operation, and maintenance of naval nuclear propulsion plants;

[(4)] *(3)* has not completed ten years of commissioned service; and

[(5)] *(4)* executes a written agreement to remain on active duty in connection with supervision, operation, and maintenance of naval nuclear propulsion plants for one period of four years in addition to any other period of obligated active service;

may, upon the acceptance by the Secretary or his designee of the written agreement, in addition to all other compensation to which he is entitled, be paid a sum of money not to exceed $5,000 for each year of the active-service agreement. The Secretary of the Navy shall determine semiannually the necessity for continuance of the special pay and the rate of special pay per year for such active-service agreements accepted within each six-month period. Upon acceptance of the agreement by the Secretary or his designee, the total amount payable shall become fixed and shall be paid in four equal yearly installments, commencing at the expiration of the initial obligated service; except, the Secretary or his designee may accept the active-service agreement not more than one year in advance if the expiration of the initial obligated actice service and the amount may then be paid in five yearly installments, not to exceed $4,000 per year, commencing with the date of acceptance of the agreement.

* * * * * * *

§ 312c. Special pay: nuclear career annual incentive bonus

(a) Under regulations prescribed by the Secretary of the Navy, an officer of the naval service who—

(1) is entitled to basic pay;

(2) is not above the pay grade O–6;

(3) has completed his initial obligated active service as an officer, but has completed less than twenty-six years of commissioned service;

(4) has, as a commissioned officer, successfully completed training for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants; and

(5) has the current technical qualifications for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants;

may, in addition to all other compensation to which he is entitled, be paid an annual bonus in an amount not to exceed $4,000 for each nuclear service year beginning after September 30, 1975, and ending before October 1, 1981. In order to be eligible for an annual bonus for any service year in accordance with this subsection, an otherwise qualified officer must have been on active duty on the last day of that nuclear service year. The amount of the annual bonus to which an officer would otherwise be entitled for a nuclear service year in accordance with this subsection shall be reduced on a pro rata basis for each day of that nuclear service year on which he was not on active duty; was not qualified for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants; was performing obligated service as the result of an active-service agreement executed under section 312 of this title; or was entitled to receive aviation career incentive pay in accordance with section 301a of this **[**title: *Provided*, That**]** *title. However*—

(1) * * *

* * * * * * *

(d) The Secretary of the Navy shall make an annual report to the **[**House and Senate Armed Services Committees**]** *Committees on Armed Services of the Senate and House of Representatives* containing data to monitor the effectiveness of the bonuses authorized by subsections (a) and (b) of this section.

* * * * * * *

[§ 313. Special pay: medical officers of the Public Health Service who execute active duty agreements

[(a) Under regulations prescribed by the Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") and approved by the President, a medical officer of the Public Health Service, who—

[(1) is below the pay grade of O-7;

[(2) is designated as being qualified in a critical specialty by the Secretary;

[(3) is determined by a board composed of officers in the medical profession under criteria prescribed by the Secretary to be qualified to enter into an active duty agreement for a specified number of years;

[(4) is not undergoing intern or initial residency training; and

[(5) executes a written active duty agreement under which he will receive incentive pay for completing a specified number of years of continuous active duty subsequent to executing such an agreement;

may, upon acceptance of the written agreement by the Secretary, or his designee, and in addition to any other pay or allowances to which he is entitled, be paid an amount not to exceed $13,500 for each year of the active duty agreement. However, while serving an active duty obligation resulting from a medical education program leading to appointment or designation as a medical officer, such an officer shall be paid $9,000 (rather than an amount determined under the preceding sentence) for each year of the active duty agreement. Upon acceptance of the agreement by the Secretary, or his designee, and subject to subsections (b) and (c) of this section, the total amount payable becomes fixed and may be paid in annual, semiannual, or monthly installments, or in a lump sum after completion of the period of active duty specified in the agreement, as prescribed by the Secretary.

[(b) Under regulations prescribed by the Secretary, the Secretary, or his designee, may terminate, at any time, an officer's entitlement to the special pay authorized by this section. In that event, the officer is entitled to be paid only for the fractional part of the period of active duty that he served, and he may be required to refund any amount he received in excess of that entitlement.

[(c) Under regulations prescribed by the Secretary of Defense or by the Secretary an officer who has received payment under this section and who voluntarily, or because of his misconduct, fails to complete the total number of years of active duty specified in the written agreement shall be required to refund the amount received that exceeds his entitlement under those regulations. If an officer has received less incentive pay than he is entitled to under those regulations at the time of his separation from active duty, he shall be entitled to receive the additional amount due him.

[(d) This section does not alter or modify any other service obligation of an officer. Completion of the agreed period of active duty, or other termination of an agreement, under this section does not entitle an officer to be separated from the service, if he has any other service obligation.

[(e) Not later than July 31 of each year, the Secretary shall submit a written report to the Committee on Armed Services of the

Senate and House of Representatives regarding the operation of the special pay program authorized by this section. The report shall be on a fiscal year basis and shall contain—

[(1) a review of the program for the fiscal year in which the report is submitted; and

[(2) the plan for the program for the succeeding fiscal year.]

CHAPTER 7—ALLOWANCES

* * * * * * *

§ 402. Basic allowance for subsistence

(a) Except as otherwise provided by law, each member of a uniformed service who is entitled to basic pay is entitled to a basic allowance for subsistence as set forth in this section.

(b) An enlisted member is entitled to the basic allowance for subsistence on a daily basis, of one of the following types—

(1) when rations in kind are not available;

(2) when permission to mess separately is granted; and

(3) when assigned to duty under emergency conditions where no messing facilities of the United States are available.

The allowance to an enlisted member, when authorized, may be paid in advance for a period of not more than three months. An enlisted member is entitled to the allowance while on an authorized leave of absence [or while confined in a hospital, but not while being subsisted at the expense of the United States] *while confined in a hospital, or while performing travel under orders away from his designated post of duty other than field duty or sea duty.* The allowance for an enlisted member who is authorized to receive the basic allowance for subsistence under this subsection is at the rate prescribed in accordance with section 1009 of this title. Unless he is entitled to basic pay under chapter 3 of this title, an enlisted member of a reserve component of a uniformed service, or of the National Guard, is entitled, in the discretion of the Secretary concerned, to rations in kind, or a part thereof, when the instruction or duty periods, described in section 206(a) of this title, total at least eight hours in a calendar day.

* * * * * * *

(e) The President may prescribe regulations for the administration of this section, *including definitions of the terms "field duty" and "sea duty" for purposes of the third sentence of subsection (b) of this section.*

§ 403. Basic allowance for quarters; variable housing allowance

(a)(1) * * *

* * * * * * *

(e) Notwithstanding any other law (including those restricting the occupany of housing facilities under the jurisdiction of a department or agency of the United States by members, and their dependents, of the armed forces above specified grades, or by members, and their dependents, of [Environmental Science Services] *National Oceanic and Atmospheric* Aministration and the Public health Service), a member of a uniformed service, and his dependents, may be accepted as tenants in, and may occupy on a rental basis, any of those housing facilities, other than public quarters constructed or designated for assignement to and occupancy without charge by such a member, and his dependents, if any. Such a member may not, because of his occupany under this subsection, be deprived of any money allowance to which he is otherwise entitled for the rental of quarters.

* * * * * * *

(j) The President may prescribe regulations for the administration of this section, including definitions of the **[words]** *terms* "field duty" and "sea duty."

* * * * * * *

§ 406. Travel and transportation allowance: dependents; baggage and household effects

(a) * * *

* * * * * * *

(d) The nontemporary storage of baggage and household effects may be authorized in facilities of the United States, or in commercial facilities when it is considered to be more economical to the United States. However, the weight of baggage and household effects stored, plus the weight of the baggage and household effects transported, in connection with a change of station may not be more than the maximum weight limitations in regulations prescribed by the Secretaries concerned when it is not otherwise fixed by law. The nontemporary storage of baggage and household effects may not be authorized for a period longer than one year from the date the member concerned is separated from the service, retired, placed on the temporary disability retired list, discharged, or released from active duty, except as prescribed in regulations by the Secretaries concerned for a member who on that date, or at any time during the one-year period following that date, is confined in a hospital, or is in its vicinity, undergoing medical treatment; or in the case of a member who—

(1) is retired, or is placed on the temporary disability retired list, under chapter 61 of title 10; or

(2) is retired with pay under any other law, or immediately following at least eight years of continuous active duty with no single break therein of more than 90 days, is discharged with *separation pay or* severance pay or is involuntarily released from active duty with *separation pay or* readjustment pay.

Except in the case of a member who, on the date of his separation, discharge, or release, or at any time during the one-year period following that date, is confined in a hospital, or is in its vicinity, undergoing medical treatment, the cost of the storage, for the period that exceeds one year, shall be paid by the member.

* * * * * * *

(g) Under uniform regulations prescribed by the Secretaries concerned, a member who—

(1) is retired, or is placed on the temporary disability retired list, under chapter 61 of title 10; or

(2) is retired with pay under any other law, or, immediately following at least eight years of continuous active duty with no

single break therein of more than 90 days, is discharged with *separation pay or* severance pay or is involuntarily released from active duty with *separation pay or* readjustment pay;

is, not later than one year from the date he is so retired, placed on that list, discharged, or released, except as prescribed in regulations by the Secretaries concerned, entitled to transportation for his dependents, baggage, and household effects to the home selected under section 404(c) of this title. In addition, baggage and household effects may be shipped to a location other than the home selected by the member. In any case in which the costs are in excess of those which would have been incurred if shipment had been made to his selected home, the member shall pay that excess cost. If a member authorized to select a home under section 404(c) of this title accrues that right or any entitlement under this subsection but dies before he exercises it, that right or entitlement accrues to and may be exercised by his surviving dependents, or his baggage and household effects may be shipped to the home of the person legally entitled thereto if there are no surviving dependents. However, in any case in which the costs are in excess of those which would have been incurred if shipment had been made to the member's selected home, the surviving dependents or the person legally entitled to the baggage and household effects, as the case may be, shall pay that excess cost.

* * * * * * *

§406b. Travel and transportation allowances: members of the Uniformed Services attached to a ship overhauling or inactivating away from home port

Under regulations prescribed by the Secretary concerned, a member of the **[**Uniformed Services**]** *uniformed services* who is on permanent duty aboard a ship which is being overhauled or inactivated away from its home port and whose dependents are residing at the home port of the ship is entitled to transportation, transportation in kind, reimbursement for personally procured transportation, or an allowance for transportation as provided in section 404(d)(3) of this **[**chapter**]** *title* for round trip travel from the port of overhaul or inactivation to the home port or after the thirty-first, ninety-first, and one hundred and fifty-first calendar day after the date on which the ship enters the overhaul or inactiviation port or after the date on which the member becomes permanently attached to the ship, whichever date is **[**later: *Provided, however,* That**]** *later. However* in no event shall the amount of reimbursement for personally procured transportation or allowance for transportation exceed the cost of Government-procured commercial round trip air travel.

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§411. Travel and transportation allowances: administrative provisions

(a) * * *

* * * * * * *

(d) The Secretary concerned shall define the **[**words**]** *term* "permanent station" for the purposes of the sections of this title designated by subsection (a) of this section. The definition shall include a shore station or the home yard or home port of a vessel to which a member of a uniformed service who is entitled to basic pay may be ordered. An authorized change in the home yard or home port of such a vessel is a change of permanent station.

* * * * * * *

§415. Uniform allowance: officers; initial allowance

(a) Subject to subsections (b) and (c) of this section, [a reserve] *an* officer of an armed force[, an officer of the Army or the Air Force without specification of component, or a regular officer of an armed force appointed under section 2106 or 2107 of title 10] is entitled to an initial allowance of not more than $200 as reimbursement for the purchase of required uniforms and equipment—

(1) upon first reporting for active duty (other than for training) for a period of more than 90 days;

(2) upon completing at least 14 days of active duty as a member of a reserve component; or

(3) upon completing 14 periods, each of which was of at least two hours' duration, of inactive-duty training as a member of the Ready Reserve.

* * * * * * *

[(c) An officer who has served on active duty as an officer of a regular component of an armed force may not, on the basis of any duty performed within two years after his separation from that component, qualify for an initial allowance under subsection (a) of this section.]

[(d)] *(c)* An allowance of $250 for uniforms and equipment may be paid to each commissioned officer of the Public Health Service who is—

(1) on active duty or on inactive duty training status; and

(2) required by directive of the Surgeon General to wear a uniform.

An officer is not entitled to more than one allowance under this subsection.

[(e) An enlisted member of the Navy, Marine Corps, or Coast Guard who is initially appointed as a temporary officer under section 5596 or 5597 of title 10 or section 214 of title 14, or a warrant officer under section 213 of title 14, as the case may be, is entitled to a uniform allowance of $250.]

§416. Uniform allowance: officers; additional [allowance] *allowances*

(a) * * *

* * * * * * *

CHAPTER 9—LEAVE

* * * * * * *

§501. Payments for unused accrued leave

(a) * * *

* * * * * * *

(3) Payment may not be made to a member for any leave he elects to have carried over to a new enlistment in any uniformed service on the day after the date of his discharge; but payment may be made to a member for any leave he elects not to carry over to a new enlistment. However, the number of days of leave for which payment is made may not exceed sixty, less the number of days for which payment was previously made under this section after **[**the first day of the second calendar month following the month in which the Department of Defense Appropriation Authorization Act, 1977, was enacted**]** *September 1, 1976.*

* * * * * * *

(d) Payments for unused accrued leave under subsections (b) and (g) of this section, in the case of a member who dies while on active duty or in the case of a member or former member who dies after retirement or discharge and before he receives that payment, shall be made in accordance with section 2771 of title 10. In the case of a member who dies while on active duty, payment for unused accrued leave under subsections (b) and (g) of this section shall be based upon the unused accrued leave the member carried forward into the leave year during which he died plus the **[**unusued**]** *unused* leave that accrued to him during that leave year. However, the number of days upon which payment is based is subject to subsection (f).

* * * * * * *

(f) The number of days upon which payment under subsection (b), (d), or (g) *of this section* is based may not exceed sixty, less the number of days for which payment has been previously made under such subsections after **[**the first day of the second calendar month following the month in which the Department of Defense Appropriation Authorization Act, 1977, was enacted**]** *September 1, 1976.* For the purposes of this subsection, the number of days upon which payment may be based shall be determined without regard to any break in service or change in status in the uniformed services.

(g) An officer of the Regular Corps of the Public Health Service, or an officer of the Reserve Corps of the Public Health Service on active duty, who is credited with accumulated and accrued annual leave on the date of his separation, retirement, or release from active duty, shall, if his application for that leave is approved by the **[**Surgeon General**]** *Secretary of Health and Human Services* be paid for that leave in a lump-sum on the basis of his basic pay, subsistence allowance, and allowance for quarters whether or not he is receiving that allowance on that date. However, the number of days upon which the lump-sum payment is based is subject to subsection (f). A lump-sum payment may not be made under this subsection to an officer—

(1) whose appointment expires or is terminated and who, without a break in active service, accepts a new appointment;

(2) who is retired for age in time of war and is continued on, or recalled to, active duty without a break in active service; or

(3) who is transferred to another department or agency of the United States under circumstances in which, by any other law, his leave may be transferred.

In this subsection, "accumulated annual leave" means unused accrued annual leave carried forward from one leave year into the next leave year, and "accrued annual leave" means the annual leave accruing to an officer during one leave year.

* * * * * * *

§ 502. Absences due to sickness, wounds, and certain other causes

(a) A member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or [Environmental Science Services] *National Oceanic and Atmospheric* Administration, who is absent because of sickness or wounds, or who is directed by the Secretary concerned, or his designated representative, to be absent from duty to await orders pending disability retirement proceedings for a period that is longer than the leave authorized by section 701 of title 10, is entitled to the pay and allowances to which he would be entitled if he were not so absent. A member who is absent with leave for any other reason for not longer than the leave authorized by that section is entitled to the same pay and allowances to which he would be entitled if he were not on leave, and to any additional allowances otherwise provided by law for members on leave.

(b) Except as provided in subsection (a) of this section, a member who is authorized by the Secretary concerned, or his designated representative, to be absent for a period that is longer than the leave authorized by section 701 of title 10 is not entitled to pay or allowances during the part of his absence that is more than the number of days' leave authorized by that section.

§ 503. Absence without leave or over leave

(a) A member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or [Environmental Science Services] *National Oceanic and Atmospheric* Administration, who is absent without leave or over leave, forfeits all pay and allowances for the period of that absence, unless it is excused as unavoidable.

(b) A commissioned officer of the Regular Corps of the Public Health Service, or an officer of the Reserve Corps of the Public Health Service on active duty, who is absent without leave, forfeits all pay and allowances for the period of that absence, unless it is excused as unavoidable.

* * * * * * *

CHAPTER 10—PAYMENTS TO MISSING PERSONS

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§ 558. Income tax deferment

Notwithstanding any other provision of law, a Federal income tax return of, or the payment of a Federal income tax by, a member of a unformed service who, at the time the return or payment would otherwise become due, is in a missing status, does not become due until the earlier of the following dates—

(1) the fifteenth day of the third month in which he ceased (except by reason of death or incompetency) being in a missing status, unless before the end of that fifteenth day he is again in a missing status; or

(2) in the fifteenth day of the third month after the month in which an executor, administrator, or conservator of the estate of the taxpayer is appointed.

That due rate is prescribed subject to the power of the Secretary of the Treasury or his delegate to extend the time for filing the return paying the tax, as in other cases, and to assess and collect the tax as provided by sections 6851, 6861, and 6871 of [title 26] *the Internal Revenue Code of 1954* in cases in which the assessment or collection is jeopardized and in cases of bankruptcy or receivership.

CHAPTER 11—PAYMENTS TO MENTALLY INCOMPETENT PERSONS

* * * * * * *

§602. Payments: designation of persons to receive amounts due

(a) * * *

(b) The board shall consist of at least three qualified medical officers or physicians, one of whom is especially qualified in the treatment of mental disorders, appointed from available medical officers or physicians under this jurisdiction by the head of whichever of the following is provided medical treatment for the member, or by a person designated by that head—

(1) Department of the Army;

(2) Department of the Navy;

(3) Department of the Air Force;

(4) Department of Health[, Education, and Welfare] *and Human Services*; or

(5) Veterans' Administration.

If the hospitalization or medical care of the member is not provided by the United States, the board shall be appointed by the Secretary of the department having jurisdiction of the member.

* * * * * * *

CHAPTER 13—ALLOTMENTS AND ASSIGNMENTS OF PAY

Sec
701. Members of Army or Air Force; contract surgeons.
702. Allotments: officers of Navy or Marine Corps.
703. Allotments: members of Coast Guard.
704. Allotments: officers of Public Health Service.
705. Assignments: enlisted members of naval service.
[706. Commissioned officers of Environmental Science Services Administration.]
706. Allotments: commissioned officers of the National Oceanic and Atmospheric Administration.
707. Allotments: members of the National Guard.

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[§ 706. Commissioned officers of Environmental Science Services Administration] *§ 706. Allotments: commissioned officers of the National Oceanic and Atmospheric Administration*

Under regulations prescribed by the Secretary of Commerce, commissioned officers of the [Environmental Science Service] *National Oceanic and Atmospheric* Administration may make allotments or assignments of their pay.

§ 707. Allotments: members of the National Guard

[(a)] The Secretary of the Army or the Secretary of the Air Force, as the case may be, may allow a member of the National Guard who is not on active duty to make allotments from his pay under sections 204 and 206 of this title for the payment of premiums under a group life insurance program sponsored by the military department of the State in which such member holds his National Guard membership or by the National Guard association of such State if the State or association concerned has agreed in writing to reimburse the United States for all costs incurred by the United States in providing for such allotments. The amount of such costs and procedures for reimbursements shall be determined by the Secretary of Defense and his determination shall be conclusive. All amounts of reimbursements for such costs received by the United States from a State or an association shall be credited to the appropriations or funds against which charges have been made for such costs.

CHAPTER 15—PROHIBITIONS AND PENALTIES

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§ 801. Restriction on payment to certain officers

(a) An officer of the Regular Navy or the Regular Marine Corps, other than a retired officer, may not be employed by a person furnishing naval supplies or war materials to the United States. If such an officer is so employed, he is not entitled to any payment from the United States during that employment.

[(c)] *(b)* Payment may not be made from any appropriation, for a period of three years after his name is placed on that list, to an officer on a retired list of the Regular Army, the Regular Navy, the Regular Air Force, the Regular Marine Corps, the Regular Coast Guard, the [Environmental Science Services] *National Oceanic and Atmospheric* Administration or the Public Health Service, who is engaging for himself or others in selling, or contracting or negotiating to sell, supplies or war materials to an agency of the Department of Defense, the Coast Guard, the [Environmental Science Services] Administration *National Oceanic and Atmospheric* or the Public Health Service.

* * * * * * *

CHAPTER 17—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
901. Wartime pay of officer of armed force exercising command higher than his grade.

902. Pay of crews of wrecked or lost naval vessels.
903. Retired members recalled to active duty; former members.
[904. Officers of Navy or Marine Corps promoted under chapter 545 of title 10: effective date of beginning of pay and allowances.
[905. Officers of Navy or Marine Corps not covered by section 904 of this title: effective date of beginning of pay and allowances.]
906. Extension of enlistment: effect on pay allowances.
907. Enlisted members and warrant officers appointed as officers: pay and allowances stabilized.

* * * * * * *

[§ 904. Officers of Navy or Marine Corps promoted under chapter 545 of title 10: effective date of beginning of pay and allowances

[(a) An officer who is promoted under any of sections 5751-5773 of title 10 is entitled to the pay and allowances of the grade to which promoted from the date of the occurrence of the vacancy that he was promoted to fill, if he is in one of the following categories—

[(1) male line officers of the Navy not restricted in the performance of duty;

[(2) male line officers of the Navy designated for engineering duty, aeronautical engineering duty, or special duty promoted to the grade of rear admiral;

[(3) male line officers of the Navy designated for engineering duty, aeronautical engineering duty, or special duty who are promoted to the grade of lieutenant commander to fill vacancies in the combined grades of lieutenant commander, commander, and captain and whose promotion was delayed because there were no vacancies for them at the time when they would otherwise have been eligible for promotion under section 5769(b) of title 10;

[(4) male line officers of the Navy designated for limited duty;

[(5) women line officers of the Navy;

[(6) male officers of the Marine Corps not restricted in the performance of duty;

[(7) male officers of the Marine Corps designated for supply duty promoted to the grade of brigadier general;

[(8) male officers of the Marine Corps designated for supply duty who are promoted to the grade of major to fill vacancies in the combined grades of major, lieutenant colonel, and colonel and whose promotion was delayed because there were no vacancies for them at the time when they would otherwise have been eligible for promotion under section 5769(b) of title 10;

[(9) male officers of the Marine Corps designated for limited duty;

[(10) women officers of the Marine Corps; or

[(11) staff corps officers of the Navy promoted to the grade of rear admiral.

[(b) A male line officer of the Navy designated for engineering duty, aeronautical engineering duty, or special duty, or a male officer of the Marine Corps designated for supply duty, if not in a category listed in subsection (a) of this section, is entitled, when promoted under any of sections 5751-5773 of title 10, to the pay and allowances of the grade to which promoted from the date on which he became eligible for promotion to that grade.

[(d) A male staff corps officer or a woman staff corps officer who is promoted to a grade below rear admiral under any of sections 5751-5773 of title 10 is entitled to the pay and allowances of the grade to which promoted from the date on which his running mate in that grade became eligible for promotion to that grade.

[§ 905. Officers of Navy or Marine Corps not covered by section 904 of this title: effective date of beginning of pay and allowances

[(a) The pay of an officer of the Regular Navy or the Regular Marine Corps begins on the date he accepts his initial appointment, except that—

[(1) the pay of an officer required to give an official bond begins on the date the bond is approved by proper authority; and

[(2) the pay of an officer commissioned within six months after his graduation from the United States Naval Academy begins on the date of rank stated in his commission.

[(b) A reserve officer who is promoted under chapter 549 of title 10 to a grade above lieutenant (junior grade) in the Naval Reserve or above first lieutenant in the Marine Corps Reserve is entitled to the pay and allowances of the grade to which promoted for duty performed from the date on which he became eligible for promotion to that grade. However, if an officer has not established his professional and moral qualifications, as prescribed by the Secretary of the Navy under section 5867 of title 10, within one year after the date on which the President approved the report of the selection board that recommended him for promotion, he is entitled to the pay and allowances of the grade to which promoted only from the date he is appointed in that grade.

[(c) A reserve officer who is promoted under section 5908 of title 10 to the grade of lieutenant (junior grade) in the Naval Reserve or first lieutenant in the Marine Corps Reserve is entitled to the pay and allowances of the higher grade for duty performed from the date given him as his date of rank.

[(d) An officer of the Navy or Marine Corps who is promoted under section 5788 of title 10 is entitled to the pay and allowances of the higher grade from his date of rank in that grade unless he is entitled to them from an earlier date under another law.

[(e) A woman officer temporarily promoted under section 5787b of title 10 is entitled to the pay and allowances of the higher grade from the date of her eligibility for that temporary promotion.

[(f) An officer appointed in a higher grade under section 5505 of title 10 is entitled to the pay and allowances of the higher grade from the date of his appointment in that grade.

[(g) A member of the naval service who is appointed under section 5597 of title 10 is entitled to the pay and allowances of the grade in which appointed from the date that appointment is made. Such a person may not suffer a reduction in the pay and allowances to which he was entitled because of his permanent status at the time of his temporary appointment, or a reduction in the pay and allowances to which he was entitled under a prior temporary appointment in a lower grade.

[(h) A member of the naval service who is appointed under section 5787 or 5787d of title 10 is entitled to the pay and allowances of the grade in which appointed from the date that appointment is made. Such a member may not suffer a reduction in the pay and allowances to which he was entitled at the time of his appointment.**]**

* * * * * * *

CHAPTER 19—ADMINISTRATION

Sec.
1001. Regulations relating to pay and allowances.
1002. Additional training or duty without pay: Reserves and members of National Guard.
1003. Assimilation of pay and allowances.
1004. Computation of pay and allowances for month or part of month.
1005. Army and Air Force**[**;**]**: prompt payments required.
1006. Advance payments.
1007. Deductions from pay.
1008. Presidential recommendations concerning adjustments and changes in pay and allowances.
1009. Adjustments of compensation.
1010. Commissioned officers: promotions; effective date for pay and allowances.
1011. Mess operations: reimbursement of expenses.

§ 1001. Regulations relating to pay and allowances

(a) * * *

(b) Regulations of the Secretary concerned relating to pay and allowances matters, similar to those covered by subsection (a) of this section, for members of the Coast Guard, the **[**Environmental Science Services**]** *National Oceanic and Atmospheric* Administration and the Public Health Service, shall, as far as practicable, conform to regulations approved under that subsection.

(c) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health**[**, Education, and Welfare**]** *and Human Services*, may obtain from the Comptroller General an advisory opinion with respect to a proposed regulation especially affecting a department under the Secretary's jurisdiction.

* * * * * * *

§ 1006. Advance payments

(a) * * *

* * * * * * *

(h) Notwithstanding section **[**529 of title 31**]** *3648 of the Revised Statutes (31 U.S.C. 529)*, the Secretary concerned may, when the last day of the pay period falls on a Saturday, Sunday, or legal holiday, authorize the payment of pay and allowances, to members of a uniformed service under his jurisdiction on the preceding workday but not more than three days before the last day of that pay period. If a member dies after he has received and advance payment under this subsection, but before the last day of the pay period for which the payment is made, no part of the amount so advanced is recoverable by the United States.

* * * * * *

§ 1009. Adjustments of compensation

(a) Whenever the General Schedule of compensation for Federal classified employees as contained in section 5332 of title 5**[**, United States Code,**]** is adjusted upward, the President shall immediately make an upward adjustment in the—

(1) monthly basic pay authorized members of the uniformed services by section 203(a) of this title;

(2) basic allowance for subsistence authorized enlisted members and officers by section 402 of this title; and

(3) basic allowance for quarters authorized members of the uniformed services by section 403(a) of this title.

(b) An adjustment under this section shall have the force and effect of law and shall—

(1) carry the same effective date as that applying to the compensation adjustments provided General Schedule employees;

(2) be based on the rates of the various elements of compensation as defined in, or made under, **[**section 8 of the Act of December 16, 1967 (Public Law 90-207; 81 Stat. 654), section 402 or 403 of this title,**]** *section 402 or 403 of this title* or this section; and

(3) subject to subsection (c) and (d) of this section, provide all eligible members with an increase in each element of compensation, set forth in subsection (a) of this section, which is of the same percentage as the overall average percentage increase in the General Schedule rates of basic pay for civilian employees.

* * * * * * *

§ 1010. Commissioned officers: promotion; effective date for pay and allowances

An officer of a uniformed service who is promoted to a grade above second lieutenant or ensign is entitled to the pay and allowances of the grade to which promoted on the effective date of the promotion.

§ 1011. Mess operation: reimbursement of expenses

(a) The Secretary of Defense shall, by regulation, establish rates for meals sold at messes to officiers, civilians, or enlisted members entitled to a per diem transportation allowance determined under section 404(d)(2) of this title. Such rates shall be established at a level sufficient to provide reimbursement of operating expenses and food costs to the appropriations concerned, but members of the uniformed services and civilians in a travel status receiving a per diem allowance in lieu of subsistence shall be charged at a rate of not less than $2.50 per day.

(b) For the purposes of this section, payment for meals at the rates established under this section may be made in cash or, in the case of enlisted members or civilian employees, by deduction from pay. Members of organized nonprofit youth groups sponsored at either the national or local level, when extended the privilage of visiting a military installation and permitted to eat in the general mess by the commanding officer of the installation, shall pay the commuted ration cost of such meal or meals.

SECTION 502 OF THE NATIONAL EMERGENCIES ACT

TITLE V—REPEAL AND CONTINUATION OF CERTAIN EMERGENCY POWER AND OTHER STATUTES

* * * * * * *

SEC. 502. (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

(2) * * *

* * * * * * *

[(8) Sections 3313, 6386(c), and 8313 of title 10, United States Code.]

Act of March 31, 1947

AN ACT To establish an Office of Selective Service Records to liquidate the Selective Service System following the termination of its functions on March 31, 1947, and to preserve and service the Selective Service records, and for other purposes.

* * * * * * *

SEC. 6. (a) * * *

* * * * * * *

(d) Any officer [on the active or retired list of the Army, Navy, Marine Corps, or Coast Guard, or of any Reserve component thereof,] *of the Armed Forces* or any officer or employee of any department or agency of the United States who may be assigned or detailed to any office or position to carry out the provisions of this Act may serve in and perform the functions of such office or position without loss of or prejudice to his status as such officer [in the Army, Navy, Marine Corps, or Coast Guard or Reserve component thereof,] *of the Armed Forces* or as such officer or employee in any department or agency of the United States.

* * * * * * *

SECTION 10 OF THE MILITARY SELECTIVE SERVICE ACT

SEC. 10. (a)(1) * * *

* * * * * * *

(b) The President is authorized—

(1) * * *

* * * * * * *

(4) to appoint, and to fix, in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates, the basic pay of such officers, agents, and employees as he may deem necessary to carry out the provisions of this title, however any officer [on the active or retired list of the

armed forces, or any reserve component thereof with his consent,] *of the Armed Forces* or any officer or employee of any department or agency of the United States who may be assigned or detailed to any office or position to carry out the provisions of this title (except to officers of positions on local boards or appeal boards established or created pursuant to section 10(b)(3)) may serve in and perform the functions of such office or position without loss of or prejudice to his status as such officer in the armed forces [or reserve component thereof,] or as such officer or employee in any department or agency of the United States;

* * * * * * *

SECTION 302 OF THE DEPARTMENT OF DEFENSE APPROPRIATION AUTHORIZATION ACT, 1974

[SEC. 302. In computing the authorized end strength for the active duty personnel of any component of the Armed Forces for any fiscal year, there shall not be included in the computation members of the Ready Reserve of such component ordered to active duty under the provisions of section 673 of title 10, United States Code, members of the Army National Guard or members of the Air National Guard called into Federal service under section 3500 or 8500, as the case may be, of title 10, United States Code, members of the militia of any State called into Federal service under chapter 15 of title 10, United States Code, or persons ordered to active duty for training.]

SECTION 3 OF THE ACT OF AUGUST 10, 1956

SEC. 3. (a) The rules of law that apply to the Armed Forces under the following provisions of title 10, Armed Forces, United States Code, including changes in those rules made after the effective date of this Act, apply also to the Coast and Geodetic Survey:

(1) * * *

* * * * * * *

(3) Chapter 69, Retired Grade, except sections *1370*, 1375 and 1376(a).

* * * * * * *

SECTION 221 OF THE PUBLIC HEALTH SERVICE ACT

RIGHTS, PRIVILEGES, ETC. OF OFFICERS AND SURVIVING BENEFICIARIES

SEC. 221. (a) Commissioned officers of the Service or their surviving beneficiaries are entitled to all the rights, benefits, privileges, and immunities now or hereafter provided for commissioned officers of the Army or their surviving beneficiaries under the following provisions of title 10, United States Code:

(1) * * *

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(3) Chapter 69, Retired Grade, except sections *1370*, 1374, 1375, and 1376(a).

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BILL SUMMARY

PURPOSE

The purpose of the bill is to revise the laws that govern the management of the commissioned-officer active-duty force. The bill would—

Establish new statutory limitations on the number of officers who may serve in senior grades below flag and general officer rank;

Provide common law for the appointment of regular officers and for the active-duty service of reserve officers;

Provide uniform laws for promotion procedures for officers in the separate services;

Establish common provisions governing career expectation in the various grades; and

Establish common mandatory separation and retirement points for regular commissioned officers.

Increase the amount of separation pay for officers separated involuntarily short of retirement; and

Provide related authorities to manage the officer force under the revised personnel system.

FISCAL DATA

The Congressional Budget Office estimates that enactment of S. 1918 as reported by the committee will result in reduction of outlays of $8.3 million in fiscal year 1981. Reduction of outlays will continue during each of the following four fiscal years achieving a reduction of $130 million in fiscal year 1984.

The Department of Defense estimate is consistent with that of the Congressional Budget Office.

The committee concurs in the estimate of the Congressional Budget Office.

DEPARTMENTAL POSITION

The Department of Defense strongly supports the bill as reported by the committee.

COMMITTEE POSITION

The Committee on Armed Services, on September 30, 1980, a quorum being present, agreed to report S. 1918, as amended, by voice vote.

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